

## DEPARTMENT OF WATER RESOURCES

## CHAPTER 870

S. B. No. 1139

An Act relating to the creation, administration, powers, duties, and operations of the Texas Department of Water Resources; providing penalties; revising Title 2, Water Code, as amended, and amending Sections 2, 3(a) and (b), 4(a), (b), and (f), 4(e)(9), 5(a), 5(d)(4) and (6), 7, 8, 9, Solid Waste Disposal Act, as amended (Article 4477—7, Vernon's Texas Civil Statutes); and declaring an emergency.

*Be it enacted by the Legislature of the State of Texas:*

Section 1. Title 2, Water Code, as amended, is revised<sup>46</sup> to read as follows:

**"TITLE 2. STATE WATER ADMINISTRATION****"SUBTITLE A. EXECUTIVE AGENCIES****"CHAPTER 5. TEXAS DEPARTMENT OF WATER RESOURCES****"SUBCHAPTER A. GENERAL PROVISIONS****"Section 5.001. Definitions**

"In this chapter:

"(1) 'Department' means the Texas Department of Water Resources.

"(2) 'Board' means the Texas Water Development Board.

"(3) 'Commission' means the Texas Water Commission.

"(4) 'Executive director' means the executive director of the Texas Department of Water Resources.

**"Sec. 5.002. Scope of Chapter**

"The powers and duties enumerated in this chapter are the general powers and duties of the department and those incidental to the conduct of its business. The department has other specific powers and duties as prescribed in other sections of this code and other laws of this state.

"[Sections 5.003–5.010 reserved for expansion]

**"SUBCHAPTER B. ORGANIZATION OF THE TEXAS DEPARTMENT OF WATER RESOURCES****"Sec. 5.011. Declaration of Policy**

"The Texas Department of Water Resources is the agency of the state given primary responsibility for implementing the provisions of the con-

<sup>46</sup> V.T.C.A. Water Code, §§ 5.001, 5.002, 5.011 to 5.018, 5.051 to 5.055, 5.091 to 5.098, 5.131 to 5.135, 5.171 to 5.181, 5.221 to 5.227, 5.261 to 5.268, 5.311 to 5.313, 5.351 to 5.357, 11.001 to 11.005, 11.021 to 11.052, 11.081 to 11.096, 11.121 to 11.147, 11.171 to 11.186, 11.201 to 11.207, 11.301 to 11.341, 11.401 to 11.409, 12.001, 12.011 to 12.017, 12.051, 12.052, 12.081 to 12.083, 12.111 to 12.114, 12.141, 16.001, 16.011 to 16.021, 16.051 to 16.058, 16.091, 16.092, 16.131 to 16.141, 16.181 to 16.198, 16.231 to 16.238, 16.271 to 16.273, 16.311 to 16.319, 17.001, 17.011 to 17.034, 17.071 to

17.088, 17.121 to 17.139, 17.171 to 17.180, 17.221 to 17.236, 17.271 to 17.284, 18.001, 18.002, 18.011 to 18.022, 18.051 to 18.056, 18.081 to 18.091, 18.121 to 18.123, 18.151, 18.152, 18.171, 18.172, 26.001 to 26.003, 26.011 to 26.046, 26.081 to 26.086, 26.121 to 26.135, 26.171 to 26.177, 26.211 to 26.225, 26.261 to 26.268, 27.001, 27.002, 27.011 to 27.019, 27.031 to 27.034, 27.051 to 27.056, 27.101 to 27.104, 28.001 to 28.004, 29.001, 29.002, 29.011 to 29.021, 29.031 to 29.033, 29.041 to 29.046, 30.001 to 30.005, 30.021 to 30.035, 30.051 to 30.066, 30.101 to 30.106.

stitution and laws of this state relating to water. To assure that fundamental safeguards of the constitution are enjoyed by persons subject to the jurisdiction of the department, this title of the code provides for the formal separation of the legislative, executive, and judicial functions of the department and creates an office of public interest within the department.

**"Sec. 5.012. Department as Agency of the State; Division of Department by Functions**

"(a) The Texas Department of Water Resources is an administrative agency of the state and is responsible for carrying out the legislative, executive, and judicial functions provided in this title and delegated to it by the constitution and other laws of this state.

"(b) With respect to the department, the terms 'legislative,' 'executive,' and 'judicial' mean those functions of the department that most closely resemble the same functions of the three branches of the state government.

**"Sec. 5.013. Legislative Functions**

"The legislative functions of the department are vested in the Texas Water Development Board.

**"Sec. 5.014. Executive Functions**

"(a) The executive functions of the department are vested in the executive director.

"(b) The executive director shall employ a deputy director, subject to the approval of the board. In the absence of the executive director, the deputy director shall assume the executive director's duties and functions.

**"Sec. 5.015. Judicial Functions**

"The judicial functions of the department are vested in the Texas Water Commission.

**"Sec. 5.016. General Duties and Responsibilities; Interpretation**

"(a) The board, the executive director, and the commission shall carry out their respective powers and duties as provided by law and in a manner that respects the separation of governmental functions.

"(b) The board, commission, or executive director shall act in the name of and for the department, and duly authorized acts of the board, commission, or executive director are to be considered as acts of the department.

**"Sec. 5.017. Construction of Title**

"This title shall be liberally construed to allow the board, the executive director, and the commission to carry out their powers and duties in a manner that respects the separation of governmental functions.

**"Sec. 5.018. Purpose of Act**

"Consistent with the objectives of the Joint Advisory Committee on Government Operations, the purpose of this Act is to assign the duties, responsibilities, and functions of the Texas Water Quality Board and Texas Water Rights Commission to a new department, and it is not the intention of this Act to make any substantive changes in the laws of the State of Texas.

"[Sections 5.019–5.050 reserved for expansion]

**"SUBCHAPTER C. ADMINISTRATIVE PROVISIONS**

**"Sec. 5.051. Funds From Other State Agencies**

"Any state agency that has statutory responsibilities for water pollution or water quality control and that receives a legislative appropriation

for these purposes may transfer to the department any amount mutually agreed on by the department and the agency, subject to the approval of the governor.

**"Sec. 5.052. Copies of Documents, Proceedings, Etc.**

"(a) Except as otherwise specifically provided in this code, on application of any persons, the department shall furnish certified or other copies of any proceeding or other official record or of any map, paper, or document filed with the board or commission. A certified copy with the seal of the department or commission as appropriate and the signature of the chairman of the board or commission or the executive director or chief clerk of the commission is admissible as evidence in any court or administrative proceeding.

"(b) The board shall provide in its rules the fees that will be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Other statutes concerning fees for copies of records do not apply to the department, except that the fees set by the board for copies prepared by the board shall not exceed those prescribed in Article 3913, Revised Civil Statutes of Texas, 1925, as amended.

**"Sec. 5.053. Documents, Etc., State Property; Open for Inspection**

"All information, documents, and data collected by the department in the performance of its duties are the property of the state. Subject to the limitations in Section 26.134 of this code, all records are open to inspection by any person during regular office hours.

**"Sec. 5.054. Seal**

"The department shall have a seal bearing the words 'Texas Department of Water Resources' encircling the oak and olive branches common to other official seals.

**"Sec. 5.055. Reports to Governor**

"The department shall make biennial reports in writing to the governor and the members of the legislature. Each report shall include a statement of the activities of the board, commission, and executive director and their respective or joint recommendations for necessary and desirable legislation.

"[Sections 5.056–5.090 reserved for expansion]

**"SUBCHAPTER D. TEXAS WATER DEVELOPMENT BOARD**

**"Sec. 5.091. State Agency**

"The Texas Water Development Board is an agency of the state and shall exercise the legislative functions of the department as defined herein.

**"Sec. 5.092. Members of the Board; Appointment**

"(a) The board is composed of six members who are appointed by the governor with the advice and consent of the senate.

"(b) The governor shall make the appointments in such a manner that each member is from a different section of the state and has no conflict of interest prohibited by state or federal law.

**"Sec. 5.093. Officers of State; Oath**

"Each member of the board is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

**"Sec. 5.094. Terms of Office**

"(a) The members of the board hold office for staggered terms of six years, with the terms of two members expiring every two years. Each member holds office until his successor is appointed and has qualified.

"(b) No person appointed to the board may serve for more than two six-year terms.

**"Sec. 5.095. Board Officers**

"(a) The governor shall designate one member as chairman of the board to serve at the will of the governor.

"(b) The members of the board shall elect a vice-chairman every two years. The board shall fill a vacancy in the office of vice-chairman for the remainder of the unexpired term.

**"Sec. 5.096. Board Meetings**

"(a) The board shall meet at least once each month on a day and at a place within the state selected by it, subject to recesses at the discretion of the board. The chairman or two board members may call a special meeting at any time by giving notice to the other members.

"(b) The chairman or in his absence the vice-chairman shall preside at all meetings of the board.

"(c) A majority of the members constitute a quorum to transact business.

**"Sec. 5.097. Compensation; Expenses**

"A member is entitled to receive an amount as provided in the General Appropriations Act for each day he serves in the performance of his duties, together with travel and other necessary expenses.

**"Sec. 5.098. Seal**

"The board shall have a seal bearing the words 'Texas Water Development Board' encircling the oak and olive branches common to other official seals.

"[Sections 5.099–5.130 reserved for expansion]

**"SUBCHAPTER E. GENERAL POWERS AND DUTIES  
OF THE BOARD**

**"Sec. 5.131. Rules**

"(a) The board shall make any rules necessary to carry out the powers and duties under the provisions of this code and other laws of this state.

"(b) The executive director and the commission may recommend to the board for its consideration any rules that they consider necessary.

"(c) Rules shall be adopted in the manner provided in the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes).

**"Sec. 5.132. General Policy**

"The board, in the rules, shall establish and approve all general policy of the department.

**"Sec. 5.133. Budget Approval**

"The board shall examine and approve all budget recommendations for the department that are to be transmitted to the legislature. The commission may provide as a supplement to those recommendations statements of particular concern to the commission.

**"Sec. 5.134. Advisory Councils**

"The board may create and consult with advisory councils, including councils for the environment, councils for public information, or any other councils which the board may consider appropriate.

**"Sec. 5.135. Appointment**

"The board shall appoint an executive director of the department to serve at the will of the board.



“[Sections 5.136–5.170 reserved for expansion]

**“SUBCHAPTER F. EXECUTIVE DIRECTOR**

**“Sec. 5.171. General Responsibilities of the Executive Director**

“The executive director shall manage the administrative affairs of the department and shall exercise the executive functions of the department, including the execution of the rules, orders, and decisions of the department.

**“Sec. 5.172. Administrative Organization of Department**

“The executive director may organize and reorganize the administrative sections and divisions of the department in a manner and in a form that will achieve the greatest efficiency and effectiveness.

**“Sec. 5.173. Appearances at Hearings**

“The position of and information developed by the department shall be presented by the executive director or his designated representative at hearings of the board and the commission and at hearings held by federal, state, and local agencies on matters affecting the public's interest in the state's water resources, including matters that have been determined to be policies of the state. The executive director shall be named a party in hearings before the commission.

**“Sec. 5.174. Contracts**

“(a) The executive director, on behalf of the department, may negotiate with and with the consent of the board enter into contracts with the United States or any of its agencies for the purpose of carrying out the powers, duties, and responsibilities of the department.

“(b) The executive director, on behalf of the department, may negotiate with and with the consent of the board enter into contracts or other agreements with states and political subdivisions of this state or any other entity for the purpose of carrying out the powers, duties, and responsibilities of the department.

“(c) The executive director, on behalf of the department, shall obtain the approval of the attorney general as to the legality of a resolution of the board authorizing state ownership in a project.

**“Sec. 5.175. Enforcement**

“The executive director may enforce the terms and conditions of any permit, certified filing, certificate of adjudication, order, standard, or rule by injunction or other appropriate remedy in a court of competent jurisdiction.

**“Sec. 5.176. Travel Expenses**

“The executive director shall be entitled to receive actual and necessary travel expenses. Other employees of the department are entitled to receive travel expenses as provided in the General Appropriations Act.

**“Sec. 5.177. Employee Moving Expenses**

“If provided by the legislative appropriation, the department may pay the costs of transporting and delivering the household goods and effects of employees transferred by the executive director from one permanent station to another when, in the judgment of the executive director, the transfer will serve in the best interest of the state.

**“Sec. 5.178. Gifts and Grants**

“The executive director may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out the powers and duties under this code.

**"Sec. 5.179. Applications and Other Documents**

"(a) An application, petition, or other document requiring action of the department shall be presented to the executive director and handled as provided in this code and in the rules of the department.

"(b) After an application, petition, or other document is processed requiring action by the commission, it shall be presented to the commission for consideration of filing. If accepted for filing by the commission, if required by law, the commission shall set a hearing date and issue appropriate notice.

"(c) After an application is processed requiring action by the board, it shall be presented to the board for action as required by law and the rules.

**"Sec. 5.180. Development Fund Manager**

"The executive director, with the approval of the board, shall appoint the development fund manager who shall perform all duties required of that position by this code and the executive director.

**"Sec. 5.181. Public Interest Office**

"(a) There is created an office of public interest to insure that the department promotes the public's interest and is responsive to citizens. Public interest includes but is not limited to environmental quality and consumer protection.

"(b) The office shall be headed by a public interest advocate appointed by the commission and the board. The executive director may submit the names and qualifications of candidates for public interest advocate to the board and commission. The board and commission shall meet jointly for the purpose of appointing or dismissing the public interest advocate by a majority vote of each body.

"(c) The advocate shall represent the public interest and be a party to all proceedings before the department.

"(d) The office shall be adequately staffed to carry out its function under this code.

"(e) No ruling, decision, or other act of the board or the commission may be appealed by the advocate.

"[Sections 5.182–5.220 reserved for expansion]

**"SUBCHAPTER G. TEXAS WATER COMMISSION****"Sec. 5.221. Creation of Commission**

"The Texas Water Commission is created as an agency of the state and shall exercise the judicial functions of the department.

**"Sec. 5.222. Members of Commission; Appointment**

"(a) The commission is composed of three members who are appointed by the governor with the advice and consent of the senate.

"(b) The governor shall make the appointments in such a manner that each member is from a different section of the state.

**"Sec. 5.223. Officers of State; Oath**

"Each member of the commission is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

**"Sec. 5.224. Terms of Office**

"(a) The members of the commission hold office for staggered terms of six years, with the terms of one member expiring every two years. Each member holds office until his successor is appointed and has qualified.

"(b) No person appointed to the commission may serve for more than two six-year terms.

**"Sec. 5.225. Full-Time Service**

"Each member of the commission shall serve on a full-time basis.

**"Sec. 5.226. Officers; Meetings**

"(a) The governor shall designate the chairman of the commission. He shall serve as chairman until the governor designates a different chairman.

"(b) The chairman may designate another commissioner to act for him in his absence.

"(c) The chairman shall preside at the meetings and hearings of the commission.

"(d) The commission shall hold regular meetings and all hearings at times specified by a commission order and entered in its minutes. The commission may hold special meetings at the times and places in the state that the commission decides are appropriate for the performance of its duties. The chairman or acting chairman shall give the other members reasonable notice before holding a special meeting.

"(e) A majority of the commission is a quorum.

**"Sec. 5.227. Chief Clerk**

"(a) The commission shall employ a chief clerk who shall assist the commission in carrying out its duties under this code.

"(b) The chief clerk shall issue notice of public hearings held under the authority of the commission.

"[Sections 5.228–5.260 reserved for expansion]

**"SUBCHAPTER H. GENERAL POWERS AND DUTIES  
OF THE COMMISSION**

**"Sec. 5.261. Scope of Subchapter**

"The powers and duties enumerated in this subchapter are the general powers and duties of the commission and those incidental to the conduct of its business. The commission has other specific powers and duties as prescribed in other sections of this code.

**"Sec. 5.262. Rules**

"(a) The commission shall adopt reasonable procedural rules to be followed in a commission hearing.

"(b) Rules shall be adopted in the manner provided in the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes).

**"Sec. 5.263. Applications and Other Documents**

"Applications and other documents to be filed with the commission for final action under this code shall be filed with the executive director and handled in the manner provided in this code.

**"Sec. 5.264. Hearings; Recess, Etc.**

"The commission may recess any hearing or examination from time to time and from place to place.

**"Sec. 5.265. Power to Administer Oaths**

"Each member of the commission, the chief clerk, or a hearing examiner may administer oaths in any hearing or examination on any matter submitted to the commission for action.

**"Sec. 5.266. Seal**

"The commission shall adopt an official seal.

**"Sec. 5.267. Commission to be Knowledgeable**

"The commission shall be knowledgeable of the water courses of the state and of the needs of the state concerning the use, storage, and conservation of water and of the need to maintain the quality of water in the state.

**"Sec. 5.268. Conservation and Quality of Water**

"The commission shall administer the law so as to promote the judicious use and the maximum conservation and protection of quality of water.

"[Sections 5.269–5.310 reserved for expansion]

**"SUBCHAPTER I. OFFICE OF HEARING EXAMINERS****"Sec. 5.311. Creation of Office**

"Within the commission there is created an office of hearing examiners to assist the commission in carrying out its powers and duties under this code. The office of hearing examiners is independent of the board, the executive director, and the divisions of the board and is under the exclusive control of the commission.

**"Sec. 5.312. Organization of Office of Hearing Examiners**

"(a) The office of hearing examiners shall be under the direction of the chief hearing examiner.

"(b) The chief hearing examiner and all assistant hearing examiners employed in the office of hearing examiners shall be attorneys licensed to practice law in this state and shall be employed by the commission.

**"Sec. 5.313. Delegation of Responsibility**

"(a) The commission may delegate to a hearing examiner the responsibility to hear any matter before the commission.

"(b) A hearing examiner shall prepare for and hold any hearing as directed by the commission and shall report to the commission on the hearing in the manner provided by law.

"[Sections 5.314–5.350 reserved for expansion]

**"SUBCHAPTER J. JUDICIAL REVIEW****"Sec. 5.351. Judicial Review of Department Acts**

"(a) A person affected by a ruling, order, decision, or other act of the department may file a petition to review, set aside, modify, or suspend the act of the department.

"(b) A person affected by a ruling, order, or decision of the department must file his petition within 30 days after the effective date of the ruling, order, or decision. A person affected by an act other than a ruling, order, or decision must file his petition within 30 days after the date the department performed the act.

"(c) Orders, decisions, or other actions of the board pursuant to Subchapters E and F of Chapter 16 and Chapter 17 of this code are not subject to appeal.

**"Sec. 5.352. Remedy for Executive Director, Commission, or Board Inaction**

"A person affected by the failure of the executive director, commission, or board to act in a reasonable time on an application to appropriate water or to perform any other duty with reasonable promptness may file a petition to compel the executive director, commission, or board to show cause why it should not be directed by the court to take immediate action.

**"Sec. 5.353. Diligent Prosecution of Suit**

"The plaintiff shall prosecute with reasonable diligence any suit brought under Section 5.351 or 5.352 of this code. If the plaintiff does not secure proper service of process or does not prosecute his suit within one year after it is filed, the court shall presume that the suit has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff after receiving due notice can show good and sufficient cause for the delay.

**"Sec. 5.354. Venue**

"A suit instituted under Section 5.351 or 5.352 of this code must be brought in the district court of Travis County.

**"Sec. 5.355. Appeal of District Court Judgment**

"A judgment or order of a district court in a suit brought for or against the department is appealable as are other civil cases in which the district court has original jurisdiction.

**"Sec. 5.356. Appeal by Executive Precluded**

"No ruling, order, decision, or other act of the board or the commission may be appealed by the executive director.

**"Sec. 5.357. Law Suits; Citation**

"Law suits filed by and against the board, commission, or executive director shall be in the name of the department. In suits against the department, board, commission, or executive director, citation may be served on the executive director or deputy director.

"[Chapters 6–10 reserved for expansion]

**"SUBTITLE B. WATER RIGHTS****"CHAPTER 11. WATER RIGHTS****"SUBCHAPTER A. GENERAL PROVISIONS****"Section 11.001. Vested Rights Not Affected**

"(a) Nothing in this code affects vested private rights to the use of water, except to the extent that provisions of Subchapter G of this chapter might affect these rights.

"(b) This code does not recognize any riparian right in the owner of any land the title to which passed out of the State of Texas after July 1, 1895.

**"Sec. 11.002. Definitions**

"In this chapter and in Chapter 12 of this code:

"(1) 'Commission' means the Texas Water Commission.

"(2) 'Board' means the Texas Water Development Board.

"(3) 'Executive director' means the executive director of the Texas Department of Water Resources.

"(4) 'Department' means the Texas Department of Water Resources.

"(5) 'Beneficial use' means use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose.

"(6) 'Water right' means a right acquired under the laws of this state to impound, divert, or use state water.

"(7) 'Appropriator' means a person who has made beneficial use of any water in a lawful manner under the provisions of any act of the legislature before the enactment of Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended, and who has

filed with the State Board of Water Engineers a record of his appropriation as required by the 1913 Act, as amended, or a person who makes or has made beneficial use of any water within the limitations of a permit lawfully issued by the commission or one of its predecessors.

**"Sec. 11.003. Streams That Form Boundaries Included**

"This chapter applies to all streams or other sources of water supply lying upon or forming a part of the boundaries of this state.

**"Sec. 11.004. Department to Receive Certified Copies of Judgments, Etc.**

"When any court of record renders a judgment, decree, or order affecting the title to any water right, claim, appropriation, or irrigation facility or affecting any matter over which the department is given supervision by law, the clerk of the court shall immediately transmit to the department a certified copy of the judgment, decree, or order.

**"Sec. 11.005. Applicability to Works Under Federal Reclamation Act**

"This chapter applies to the construction, maintenance, and operation of irrigation works constructed in this state under the federal reclamation act, as amended (43 U.S.C. Sec. 271 et seq.), to the extent that this chapter is not inconsistent with the federal act or the regulations made under that act by the secretary of the interior.

"[Sections 11.006–11.020 reserved for expansion]

**"SUBCHAPTER B. RIGHTS IN STATE WATER**

**"Sec. 11.021. State Water**

"(a) The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state is the property of the state.

"(b) Water imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facilities owned or operated by the state is the property of the state.

**"Sec. 11.022. Acquisition of Right to Use State Water**

"The right to the use of state water may be acquired by appropriation in the manner and for the purposes provided in this chapter. When the right to use state water is lawfully acquired, it may be taken or diverted from its natural channel.

**"Sec. 11.023. Purposes for Which Water May be Appropriated**

"(a) State water may be appropriated, stored, or diverted for:

"(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;

"(2) industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

"(3) irrigation;

"(4) mining and recovery of minerals;

"(5) hydroelectric power;

"(6) navigation;

"(7) recreation and pleasure;

"(8) stock raising;

“(9) public parks; and

“(10) game preserves.

“(b) State water also may be stored or diverted for any other beneficial use.

“(c) Unappropriated storm water and floodwater may be appropriated to recharge underground freshwater bearing sands and aquifers in the portion of the Edwards underground reservoir located within Kinney, Uvalde, Medina, Bexar, Comal, and Hays counties if it can be established by expert testimony that an unreasonable loss of state water will not occur and that the water can be withdrawn at a later time for application to a beneficial use. The normal or ordinary flow of a stream or watercourse may never be appropriated, diverted, or used by a permittee for this recharge purpose.

“(d) When it is put or allowed to sink into the ground, water appropriated under Subsection (c) of this section loses its character and classification as storm water or floodwater and is considered percolating groundwater.

“(e) The amount of water appropriated for each purpose mentioned in this section shall be specifically appropriated for that purpose, subject to the preferences prescribed in Section 11.024 of this code.

“(f) The water of any arm, inlet, or bay of the Gulf of Mexico may be changed from salt water to sweet or fresh water and held or stored by dams, dikes, or other structures and may be taken or diverted for any purpose authorized by this chapter.

**“Sec. 11.024. Appropriation: Preferences**

“In order to conserve and properly utilize state water, the public welfare requires not only recognition of beneficial uses but also a constructive public policy regarding the preferences between these uses, and it is therefore declared to be the public policy of this state that in appropriating state water preference shall be given to the following uses in the order named:

“(1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;

“(2) industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;

“(3) irrigation;

“(4) mining and recovery of minerals;

“(5) hydroelectric power;

“(6) navigation;

“(7) recreation and pleasure; and

“(8) other beneficial uses.

**“Sec. 11.025. Scope of Appropriative Right**

“A right to use state water under a permit or a certified filing is limited not only to the amount specifically appropriated but also to the amount which is being or can be beneficially used for the purposes specified in the appropriation, and all water not so used is considered not appropriated.

**“Sec. 11.026. Perfection of an Appropriation**

“No right to appropriate water is perfected unless the water has been beneficially used for a purpose stated in the original declaration of intention to appropriate water or stated in a permit issued by the commission or one of its predecessors.

**"Sec. 11.027. Rights Between Appropriators**

"As between appropriators, the first in time is the first in right.

**"Sec. 11.028. Exception**

"Any appropriation made after May 17, 1931, for any purpose other than domestic or municipal use is subject to the right of any city or town to make further appropriations of the water for domestic or municipal use without paying for the water. However, this section does not apply to any stream which constitutes or defines the international boundary between the United States of America and the Republic of Mexico.

**"Sec. 11.029. Title to Appropriation by Limitation**

"When an appropriator from a source of water supply has used water under the terms of a certified filing or a permit for a period of three years, he acquires title to his appropriation by limitation against any other claimant of water from the same source of water supply and against any riparian owner on the same source of water supply.

**"Sec. 11.030. Forfeiture of Appropriation**

"If any lawful appropriation or use of state water is wilfully abandoned during any three successive years, the right to use the water is forfeited and the water is again subject to appropriation.

**"Sec. 11.031. Annual Report**

"(a) Not later than March 1 of every year, every person who takes water during the preceding calendar year from a stream or reservoir shall submit a written report to the department on a form prescribed by the department. The report shall contain all information required by the department to aid in administering the water law and in making inventory of the state's water resources. However, with the exception of public utilities and political subdivisions which furnish water for municipal uses, no report is required of persons who take water solely for domestic or livestock purposes.

"(b) A person who fails to file an annual report with the department as required by this section is liable to a penalty of \$25, plus \$1 per day for each day he fails to file the statement after March 1. However, the maximum penalty under this section is \$150. The state may sue to recover the penalty.

**"Sec. 11.032. Records**

"(a) A person who owns and operates a system of waterworks used for a purpose authorized by this code shall keep a detailed record of daily operations so that the quantity of water taken or diverted each calendar year can be determined.

"(b) If the water is used for irrigation, the record must show the number of acres irrigated, the character of the crops grown, and the yield per acre. No survey is required to determine the exact number of acres irrigated.

**"Sec. 11.033. Eminent Domain**

"The right to take water necessary for domestic and municipal supply purposes is primary and fundamental, and the right to recover from other uses water which is essential to domestic and municipal supply purposes is paramount and unquestioned in the policy of the state. All political subdivisions of the state and constitutional governmental agencies exercising delegated legislative powers have the power of eminent domain to be exercised as provided by law for domestic, municipal, and manufacturing uses and for other purposes authorized by this code, including the irrigation of land for all requirements of agricultural employment.



**"Sec. 11.034. Reservoir Site: Land and Rights-of-Way**

"An appropriator who is authorized to construct a dam or reservoir is granted the right-of-way, not to exceed 100 feet wide, and the necessary area for the site, over any public school land, university land, or asylum land of this state and the use of the rock, gravel, and timber on the site and right-of-way for construction purposes, after paying compensation as determined by the commission. An appropriator may acquire the reservoir site and rights-of-way over private land by contract.

**"Sec. 11.035. Condemnation of Private Property**

"(a) An appropriator may obtain rights-of-way over private land and may obtain the land necessary for pumping plants, intakes, headgates, and storage reservoirs by condemnation.

"(b) The party obtaining private property by condemnation shall cause damages to be assessed and paid for as provided by the statutes of this state relating to eminent domain.

"(c) If the party exercising the power granted by this section is not a corporation, district, city, or town, he shall apply to the department for the condemnation.

"(d) The executive director shall have the proposed condemnation investigated. After the investigation, the commission may give notice to the party owning the land proposed to be condemned and hold a hearing on the proposed condemnation.

"(e) If after a hearing the commission determines that the condemnation is necessary, the executive director may institute condemnation proceedings in the name of the State of Texas for the use and benefit of the party who applied for the condemnation and all others similarly situated.

"(f) The parties at whose instance a condemnation suit is instituted shall pay the costs of the suit and condemnation in proportion to the benefits received by each party as fixed by the commission. Before using any of the condemned rights or property, a party receiving the rights or property shall pay the amount of costs fixed by the commission.

"(g) If, after the costs of the condemnation proceedings have been paid, a party seeks to take the benefits of the condemnation proceedings, he shall apply to the department for the benefits. The commission may grant the application and fix the fees and charges to be paid by the applicant.

**"Sec. 11.036. Conserved or Stored Water: Supply Contract**

"(a) A person, association of persons, corporation, or water improvement or irrigation district having in possession and control any storm water, floodwater, or rainwater that is conserved or stored as authorized by this chapter may contract to supply the water to any person, association of persons, corporation, or water improvement or irrigation district having the right to acquire use of the water.

"(b) The price and terms of the contract shall be just and reasonable and without discrimination, and the contract is subject to the same revision and control as provided in this code for other water rates and charges. If any person uses the stored or conserved water without first entering into a contract with the party that conserved or stored it, the user shall pay for the use at a rate determined by the commission to be just and reasonable, subject to court review as in other cases.

**"Sec. 11.037. Water Suppliers: Rules and Regulations**

"Every person, association of persons, corporation, or irrigation district conserving or supplying water for any of the purposes authorized by

this chapter shall make and publish reasonable rules and regulations relating to:

- “(1) the method of supply;
- “(2) the use and distribution of the water; and
- “(3) the procedure for applying for the water and paying for it.

**“Sec. 11.038. Rights of Owners of Land Adjoining Canal, Etc.**

“(a) A person who owns or holds a possessory interest in land adjoining or contiguous to a canal, ditch, flume, lateral, dam, reservoir, or lake constructed and maintained under the provisions of this chapter and who has secured a right to the use of water in the canal, ditch, flume, lateral, dam, reservoir, or lake is entitled to be supplied from the canal, ditch, flume, lateral, dam, reservoir, or lake with water for irrigation of the land and for mining, milling, manufacturing, development of power, and stock raising, in accordance with the terms of his contract.

“(b) If the person, association of persons, or corporation owning or controlling the water and the person who owns or holds a possessory interest in the adjoining land cannot agree on a price for a permanent water right or for the use of enough water for irrigation of the person's land or for mining, milling, manufacturing, development of power, or stock raising, then the party owning or controlling the water, if he has any water not contracted to others, shall furnish the water necessary for these purposes at reasonable and nondiscriminatory prices.

**“Sec. 11.039. Distribution of Water During Shortage**

“(a) If a shortage of water in a water supply results from drouth, accident, or other cause, the water to be distributed shall be divided among all customers pro rata, according to the amount each may be entitled to, so that preference is given to no one and everyone suffers alike.

“(b) Nothing in Subsection (a) of this section precludes the person, association of persons, or corporation owning or controlling the water from supplying water to a person who has a prior vested right to the water under the laws of this state.

**“Sec. 11.040. Permanent Water Right**

“(a) A permanent water right is an easement and passes with the title to land.

“(b) A written instrument conveying a permanent water right may be recorded in the same manner as any other instrument relating to a conveyance of land.

“(c) The owner of a permanent water right is entitled to use water according to the terms of his contract. If there is no contract, the owner is entitled to use water at a just, reasonable, and nondiscriminatory price.

**“Sec. 11.041. Denial of Water: Complaint**

“(a) Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present to the department a written petition showing:

- “(1) that he is entitled to receive or use the water;
- “(2) that he is willing and able to pay a just and reasonable price for the water;
- “(3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and
- “(4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that

the price or rental demanded for the available water is not reasonable and just or is discriminatory.

"(b) If the petition is accompanied by a deposit of \$25, the executive director shall have a preliminary investigation of the complaint made and determine whether or not there are probable grounds for the complaint.

"(c) If, after preliminary investigation, the executive director determines that probable grounds exist for the complaint, the commission shall enter an order setting a time and place for a hearing on the petition.

"(d) The commission may require the complainant to make an additional deposit or execute a bond satisfactory to the commission in an amount fixed by the commission conditioned on the payment of all costs of the proceeding.

"(e) At least 20 days before the date set for the hearing, the commission shall transmit by registered mail a certified copy of the petition and a certified copy of the hearing order to the person against whom the complaint is made.

"(f) The commission shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. On completion of the hearing, the commission shall render a written decision.

"(g) If, after the preliminary investigation, the executive director determines that no probable grounds exist for the complaint, the executive director shall dismiss the complaint. The department may either return the deposit or pay it into the State Treasury.

**"Sec. 11.042. Delivering Water Down Banks and Beds**

"Under rules prescribed by the board, a person, association of persons, corporation, or water improvement or irrigation district supplying stored or conserved water under contract as provided in this chapter may use the bank and bed of any flowing natural stream in the state to convey the water from the place of storage to the place of use or to the diversion plant of the appropriator. The board shall prescribe rules for this purpose.

**"Sec. 11.043. Recordation of Conveyance of Irrigation Work**

"(a) A conveyance of a ditch, canal, or reservoir or other irrigation work or an interest in such an irrigation work must be executed and acknowledged in the same manner as a conveyance of real estate. Such a conveyance must be recorded in the deed records of the county in which the ditch, canal, or reservoir is located.

"(b) If a conveyance of property covered by Subsection (a) of this section is not made in the prescribed manner, it is null and void against subsequent purchasers in good faith and for valuable consideration.

**"Sec. 11.044. Roads and Highways**

"(a) An appropriator has the right to construct ditches, canals, or other conveyances along or across all roads and highways necessary for the construction of waterworks. Bridges, culverts, or siphons shall be constructed at all road and highway crossings as necessary to prevent any impairment of the uses of the road or highway.

"(b) If any public road, highway, or public bridge is located on the ground necessary for a damsite, reservoir, or lake, the commissioners court shall change the road and remove the bridge so that it does not interfere with the construction of the proposed dam, reservoir, or lake. The party desiring to construct the dam, reservoir, or lake shall pay the expense of moving the bridge or roadway.

**"Sec. 11.045. Ditches and Canals**

"An appropriator is entitled to construct ditches and canals along or across any stream of water.

**"Sec. 11.046. Return Unused Water**

"A person who takes or diverts water from a running stream for the purposes authorized by this code shall conduct surplus water back to the stream from which it was taken if the water can be returned by gravity flow and it is reasonably practicable to do so.

**"Sec. 11.047. Failure to Fence**

"If a person, association of persons, corporation, or water improvement or irrigation district that owns or controls a ditch, canal, reservoir, dam, or lake does not keep it securely fenced, there is no cause of action against the owner of livestock that trespass.

**"Sec. 11.048. Cost of Maintaining Irrigation Ditch**

"(a) If an irrigation ditch is owned or used by two or more persons, mutual or cooperative companies, or corporations, each party who has an interest in the ditch shall pay his proportionate share of the cost of operating and maintaining the ditch.

"(b) If a person who owns a joint interest in a ditch refuses to do or to pay for his proportionate share of the work that is reasonably necessary for the proper maintenance and operation of the ditch, the other owners may, after giving him 10 days written notice, proceed themselves to do his share of the necessary work and recover from him the reasonable expense or value of the work or labor performed. The action for the cost of the work may be brought in any court having jurisdiction over the amount in controversy.

**"Sec. 11.049. Examination and Survey**

"A person may make any necessary examination and survey in order to select the most advantageous sites for a reservoir and rights-of-way to be used for any of the purposes authorized by this chapter, and for this purpose a person may enter the land or water of any other person.

**"Sec. 11.050. Tidewater Gates, Etc.**

"(a) An appropriator authorized to take water for irrigation, subject to the laws of the United States and the regulations made under its authority, may construct gates or breakwaters, dams, or dikes with gates, in waters wholly in this state, as necessary to prevent pollution of the fresh water of any river, bayou, or stream due to the ebb and flow of the tides of the Gulf of Mexico.

"(b) The work shall be done in such a manner that navigation of vessels on the stream is not obstructed, and where any gate is used, the appropriator shall at all times keep a competent person at the gate to allow free navigation.

"(c) A dam, dike, or breakwater constructed under this section may not be placed at any point except where Gulf tides ebb and flow and may not be constructed so as to obstruct the flow of fresh water to any appropriator or riparian owner downstream.

**"Sec. 11.051. Irrigation: Lien on Crops**

"(a) A person who constructs a ditch, canal, dam, lake, or reservoir for the purpose of irrigation and who leases, rents, furnishes, or supplies water to any person for irrigation, with or without a contract, has a preference lien superior to every other lien on the irrigated crops. However, when any irrigation district or conservation and reclamation district obtains a water supply under contract with the United States, the board of directors of the district, by resolution entered in its minutes, with the

consent of the secretary of the interior, may waive the preference lien in whole or in part.

"(b) To enforce the lien, the lienholder has all the rights and remedies prescribed by Articles 5222 through 5239, Revised Civil Statutes of Texas, 1925.

**"Sec. 11.052. Activities Under the Federal Reclamation Act**

"The Secretary of the Interior of the United States is authorized to conduct any activities in this state necessary to perform his duties under the federal reclamation act, as amended (43 U.S.C. Section 371 et seq.).

"[Sections 11.053–11.080 reserved for expansion]

**"SUBCHAPTER C. UNLAWFUL USE, DIVERSION, WASTE, ETC.**

**"Sec. 11.081. Unlawful Use of State Water**

"(a) No person may wilfully take, divert, or appropriate any state water for any purpose without first complying with all applicable requirements of this chapter.

"(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$100 or by confinement in the county jail for not more than six months or by both.

"(c) A person commits a separate offense each day he continues to take, divert, or appropriate water in violation of this section.

"(d) Possession of state water when the right to its use has not been acquired according to the provisions of this chapter is prima facie evidence of a violation of this section.

**"Sec. 11.082. Unlawful Use: Civil Penalty**

"(a). A person who wilfully takes, diverts, or appropriates state water without complying with the applicable requirements of this chapter is also liable to a penalty of not to exceed \$100 per day for each day he continues the taking, diversion, or appropriation.

"(b) The state may recover the penalties prescribed in Subsection (a) of this section by suit brought for that purpose in a court of competent jurisdiction.

"(c) An action to collect the penalty provided in this section must be brought within one year from the date of the alleged violation.

**"Sec. 11.083. Other Unlawful Taking**

"(a) No person may wilfully open, close, change, or interfere with any headgate or water box without lawful authority.

"(b) No person may wilfully use water or conduct water through his ditch or upon his land unless he is entitled to do so.

"(c) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$1,000 or by confinement in the county jail for not more than six months.

"(d) The possession or use of water on his land by a person not entitled to the water by the provisions of this code is prima facie evidence of a violation of this section.

**"Sec. 11.084. Sale of Permanent Water Right Without a Permit**

"(a) No person may sell or offer to sell a permanent water right unless he has perfected a right to appropriate state water by a certified filing, or unless he has obtained a permit from the commission, authorizing the use of the water for the purposes for which the permanent water right is conveyed.

“(b) A person who violates Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than one year or by both.

**“Sec. 11.085. Interwatershed Transfers**

“(a) No person may take or divert any of the water of the ordinary flow, underflow, or storm flow of any stream, watercourse, or watershed in this state into any other natural stream, watercourse, or watershed to the prejudice of any person or property situated within the watershed from which the water is proposed to be taken or diverted.

“(b) No person may transfer water from one watershed to another without first applying for and receiving a permit from the commission to do so. Before issuing such a permit, the commission shall hold a hearing to determine the rights that might be affected by the transfer. The commission shall give notice and hold the hearing in the manner prescribed by its procedural rules.

“(c) A person who takes or diverts water in violation of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$500 or by confinement in the county jail for not more than six months.

“(d) A person commits a separate offense each day he continues to take or divert water in violation of this section.

**“Sec. 11.086. Overflow Caused by Diversion of Water**

“(a) No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded.

“(b) A person whose property is injured by an overflow of water caused by an unlawful diversion or impounding has remedies at law and in equity and may recover damages occasioned by the overflow.

“(c) The prohibition of Subsection (a) of this section does not in any way affect the construction and maintenance of levees and other improvements to control floods, overflows, and freshets in rivers, creeks, and streams or the construction of canals for conveying water for irrigation or other purposes authorized by this code. However, this subsection does not authorize any person to construct a canal, lateral canal, or ditch that obstructs a river, creek, bayou, gully, slough, ditch, or other well-defined natural drainage.

“(d) Where gullies or sloughs have cut away or intersected the banks of a river or creek to allow floodwaters from the river or creek to overflow the land nearby, the owner of the flooded land may fill the mouth of the gullies or sloughs up to the height of the adjoining banks of the river or creek without liability to other property owners.

**“Sec. 11.087. Diversion of Water on International Stream**

“(a) When storm water or floodwater is released from a dam or reservoir on an international stream and the water is designated for use or storage downstream by a specified user who is legally entitled to receive it, no other person may store, divert, appropriate, or use the water or interfere with its passage downstream.

“(b) The board may make and enforce rules and orders to implement the provisions of this section, including rules and orders designed to:

“(1) establish an orderly system for water releases and diversions in order to protect vested rights and to avoid the loss of released water;

"(2) prescribe the time that releases of water may begin and end;

"(3) determine the proportionate quantities of the released water in transit and the water that would have been flowing in the stream without the addition of the released water;

"(4) require each owner or operator of a dam or reservoir on the stream between the point of release and the point of destination to allow free passage of the released water in transit; and

"(5) establish other requirements the board considers necessary to effectuate the purposes of this section.

"(c) Orders made by the commission to effectuate the board's regulations under this section need not be published, but the commission shall transmit a copy of every such order by certified mail to each diverter of water and to each reservoir owner on the stream between the point of release and the point of destination of the released water as shown by the records of the department.

"(d) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$100 or by confinement in the county jail for not more than six months or by both. A person commits a separate offense each day he continues to violate this section.

**"Sec. 11.088. Destruction of Waterworks**

"(a) No person may wilfully cut, dig, break down, destroy, or injure or open a gate, bank, embankment, or side of any ditch, canal, reservoir, flume, tunnel or feeder, pump or machinery, building, structure, or other work which is the property of another, or in which another owns an interest, or which is lawfully possessed or being used by another, and which is used for irrigation, milling, mining, manufacturing, the development of power, domestic purposes, or stock raising, with intent to:

"(1) maliciously injure a person, association, corporation, water improvement or irrigation district;

"(2) gain advantage for himself; or

"(3) take or steal water or cause water to run out or waste out of the ditch, canal, or reservoir, feeder, or flume for his own advantage or to the injury of a person lawfully entitled to the use of the water or the use or management of the ditch, canal, tunnel, reservoir, feeder, flume, machine, structure, or other irrigation work.

"(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$1,000 or by confinement in the county jail for not more than two years or by both.

**"Sec. 11.089. Johnson Grass or Russian Thistle**

"(a) No person who owns, leases, or operates a ditch, canal, or reservoir or who cultivates land abutting a reservoir, ditch, flume, canal, wasteway, or lateral may permit Johnson grass or Russian thistle to go to seed on the waterway within 10 feet of the high-water line if the waterway crosses or lies on the land owned or controlled by him.

"(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 nor more than \$500 or by confinement in the county jail for not less than 30 days nor more than six months or by both.

"(c) The provisions of this section are not applicable in Tom Green, Sterling, Irion, Schleicher, McCullough, Brewster, Menard, Maverick, Kinney, Val Verde, and San Saba counties.

**"Sec. 11.090. Polluting and Littering**

"(a) No person may deposit in any canal, lateral, reservoir, or lake, used for a purpose named in this chapter, the carcass of any dead animal, tin cans, discarded buckets or pails, garbage, ashes, bailing or barbed wire, earth, offal, or refuse of any character or any other article which might pollute the water or obstruct the flow of a canal or similar structure.

"(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$100 or by confinement in the county jail for not more than six months or by both.

**"Sec. 11.091. Interference With Delivery of Water Under Contract**

"(a) No person may wilfully take, divert, appropriate, or interfere with the delivery of conserved or stored water under Section 11.042 of this code.

"(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$100 or by confinement in the county jail for not more than six months or by both.

"(c) A person commits a separate offense each day he continues to violate this section.

"(d) On the petition of any interested party, the district court of any county through which the water may pass shall enjoin any actual or threatened act prohibited by this section.

**"Sec. 11.092. Wasteful Use of Water**

"A person who owns or has a possessory right to land contiguous to a canal or irrigation system and who acquires the right by contract to use the water from it commits waste if he:

"(1) permits the excessive or wasteful use of water by any of his agents or employees; or

"(2) permits the water to be applied to anything but a beneficial use.

**"Sec. 11.093. Abatement of Waste as Public Nuisance**

"(a) A person who permits an unreasonable loss of water through faulty design or negligent operation of any waterworks using water for a purpose named in this chapter commits waste, and the commission may declare the works causing the waste to be a public nuisance. The commission may take the necessary action to abate the nuisance. Also, any person who may be injured by the waste may sue in the district court having jurisdiction over the works causing the waste to have the operation of the works abated as a public nuisance.

"(b) In case of a wasteful use of water defined by Section 11.092 of this code, the commission shall declare the use to be a public nuisance and shall act to abate the nuisance by directing the person supplying the water to close the water gates of the person wasting the water and to keep them closed until the commission determines that the unlawful use of water is corrected.

**"Sec. 11.094. Penalty for Use of Works Declared Public Nuisance**

"(a) No person may operate or attempt to operate any waterworks or irrigation system or use any water under contract with any waterworks or irrigation system that has been previously declared to be a public nuisance.

"(b) A person who violates any provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than



\$1,000 or by confinement in the county jail for not more than one year or by both.

**"Sec. 11.095. Penalty for Waste**

"A person who wilfully or knowingly commits waste as provided in Section 11.092 or 11.093(a) of this code is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500 or by confinement in the county jail for not more than 90 days or by both.

**"Sec. 11.096. Obstruction of Navigable Streams**

"(a) No person may obstruct the navigation of any stream which can be navigated by steamboats, keelboats, or flatboats by cutting and felling trees or by building on or across the stream any dike, milldam, bridge, or other obstruction.

"(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$500.

"[Sections 11.097–11.120 reserved for expansion]

**"SUBCHAPTER D. PERMITS TO USE STATE WATER**

**"Sec. 11.121. Permit Required**

"Except as provided in Section 11.142 of this code, no person may appropriate any state water or begin construction of any work designed for the storage, taking, or diversion of water without first obtaining a permit from the commission to make the appropriation.

**"Sec. 11.122. Amendments to Water Rights Required**

"(a) All holders of permits, certified filings, and certificates of adjudication issued under Section 11.323 of this code shall obtain from the commission authority to change the place of use, purpose of use, point of diversion, rate of diversion, acreage to be irrigated, or otherwise alter a water right.

"(b) The board shall adopt rules to effectuate the provisions of this section.

**"Sec. 11.123. Permit Preferences**

"The commission shall give preference to applications in the order declared in Section 11.024 of this code and to applications which will effectuate the maximum utilization of water and are calculated to prevent the escape of water without contribution to a beneficial public service.

**"Sec. 11.124. Application for Permit**

"(a) An application to appropriate unappropriated state water must:

"(1) be in writing and sworn to;

"(2) contain the name and post-office address of the applicant;

"(3) identify the source of water supply;

"(4) state the nature and purposes of the proposed use and the amount of water to be used for each purpose;

"(5) state the location and describe the proposed facilities;

"(6) state the time within which the proposed construction is to begin; and

"(7) state the time required for the application of water to the proposed use.

"(b) If the proposed use is irrigation, the application must also contain:

"(1) a description of the land proposed to be irrigated; and

"(2) an estimate of the total acreage to be irrigated.

“(c) If the application is for a seasonal permit, under the provisions of Section 11.137 of this code, the application must also state the months or seasons of the year the water is to be used.

“(d) If the application is for a temporary permit under the provisions of Section 11.138 of this code, the application must also state the period of the proposed temporary use.

**“Sec. 11.125. Map or Plat**

“(a) The application must be accompanied by a map or plat drawn on tracing linen on a scale not less than one inch equals 2,000 feet.

“(b) The map or plat must show substantially:

“(1) the location and extent of the proposed facilities;

“(2) the location of the headgate, intake, pumping plant, or point of diversion by course and distance from permanent natural objects or landmarks;

“(3) the location of the main ditch or canal and the locations of the laterals or branches of the main ditch or canal;

“(4) the course of the water supply;

“(5) the position, waterline, and area of all lakes, reservoirs, or basins intended to be used or created;

“(6) the point of intersection of the proposed facilities with any other ditch, canal, lateral, lake, or reservoir; and

“(7) the location of any ditch, canal, lateral, reservoir, lake, dam, or other similar facility already existing in the area, drawn in a different colored ink than that used to represent the proposed facilities, and the name of the owner of the existing facility.

“(c) The map or plat must also contain:

“(1) the name of the proposed facility or enterprise;

“(2) the name of the applicant; and

“(3) a certificate of the surveyor, giving the date of his survey, his name and post-office address, and the date of the application which the certificate accompanies.

**“Sec. 11.126. Department Requirements**

“(a) If the proposed taking or diversion of water for irrigation exceeds nine cubic feet per second, the executive director may require additional information as prescribed by this section.

“(b) The executive director may require a continuous longitudinal profile, cross sections of the proposed channel, and the detail plans of any proposed structure, on any scales and with any definition the executive director considers necessary or expedient.

“(c) If the application proposes construction of a dam greater than six feet in height either for diversion or storage, the executive director may also require filing a copy of all plans and specifications and a copy of the engineer's field notes of any survey of the lake or reservoir. No work on the project shall proceed until approval of the plans is obtained from the commission.

“(d) If the applicant is a corporation, the commission may require filing a certified copy of its articles of incorporation, a statement of the names and addresses of its directors and officers, and a statement of the amount of its authorized capital stock and its paid-up capital stock.

“(e) If the applicant is not a corporation, the commission may require filing a sworn statement showing the name and address of each person interested in the appropriation, the extent of his interest, and his financial condition.

**"Sec. 11.127. Additional Requirements; Drainage Plans**

"If the commission believes that the efficient operation of any existing or proposed irrigation system may be adversely affected by lack of adequate drainage facilities incident to the work proposed to be done by an applicant, the commission may require the applicant to submit plans for drainage adequate to guard against any injury which the proposed work may entail.

**"Sec. 11.128. Payment of Fee**

"If the applicant is not exempted from payment of the filing fee under Section 12.112 of this code, he shall pay the filing fee prescribed by Section 12.111(b) of this code at the time he files the application. The commission shall not record, file, or consider the application until the executive director certifies to the commission that the fee is paid.

**"Sec. 11.129. Review of Application; Amendment**

"The commission shall determine whether the application, maps, and other materials comply with the requirements of this chapter and the rules of the board. The commission may require amendment of the application, maps, or other materials to achieve necessary compliance.

**"Sec. 11.130. Recording Applications**

"(a) The executive director shall have all applications for appropriations recorded in a well-bound book kept for that purpose in the department's office.

"(b) The executive director shall have the applications indexed alphabetically in the name of:

- "(1) the applicant;
- "(2) the stream or source from which the appropriation is sought to be made; and
- "(3) the county in which the appropriation is sought to be made.

**"Sec. 11.131. Examination and Denial of Application Without Hearing**

"(a) The commission shall make a preliminary examination of the application, and if it appears that there is no unappropriated water in the source of supply or that the proposed appropriation should not be allowed for other reasons, the commission may deny the application.

"(b) If the commission denies the application under this section and the applicant elects not to proceed further, the commission may order any part of the fee submitted with the application returned to the applicant.

**"Sec. 11.132. Notice of Hearing**

"(a) The commission shall give notice of the hearing on the application as prescribed by this section.

"(b) In the notice, the commission shall:

- "(1) state the name and address of the applicant;
- "(2) state the date the application was filed;
- "(3) state the purpose and extent of the proposed appropriation of water;
- "(4) identify the source of supply and the place where the water is to be stored or taken or diverted from the source of supply;
- "(5) specify the time and place of the hearing; and
- "(6) give any additional information the commission considers necessary.

"(c) If the proposed use is for irrigation, the commission shall include in the notice a general description of the location and area of the land to be irrigated.

"(d) The notice shall be published once a week for two consecutive weeks before the date stated in the notice for the hearing in some newspaper having a general circulation in the section of the state where the source of water is located.

"(e) The commission shall also mail a copy of the notice by first-class mail, postage prepaid, to each claimant or appropriator of water from the source of water supply, the record of whose claim or appropriation has been filed in the office of the commission. The notice shall also be mailed by first-class mail, postage prepaid, to all navigation districts within the watershed concerned. The inadvertent failure of the commission to mail a notice to a navigation district which is not a claimant or appropriator of water does not prevent the hearing on the application.

"(f) The notice shall be mailed and first published not less than 20 days before the date set for the hearing.

**"Sec. 11.133. Hearing**

"At the time and place stated in the notice, the commission shall hold a hearing on the application. Any person may appear at the hearing in person or by attorney or may enter his appearance in writing. Any person who appears may present objection to the issuance of the permit. The commission may receive evidence, orally or by affidavit, in support of or in opposition to the issuance of the permit, and it may hear arguments.

**"Sec. 11.134. Action on Application**

"(a) After the hearing, the commission shall make a written decision granting or denying the application. The application may be granted or denied in whole or in part.

"(b) The commission shall grant the application only if:

"(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fee;

"(2) unappropriated water is available in the source of supply; and

"(3) the proposed appropriation:

"(A) contemplates the application of water to any beneficial use;

"(B) does not impair existing water rights or vested riparian rights; and

"(C) is not detrimental to the public welfare.

**"Sec. 11.135. Issuance of Permit**

"(a) On approval of an application, the commission shall issue a permit to the applicant. The applicant's right to take and use water is limited to the extent and purposes stated in the permit.

"(b) The permit shall be in writing and attested by the seal of the commission, and it shall contain substantially the following information:

"(1) the name of the person to whom the permit is issued;

"(2) the date the permit is issued;

"(3) the date the original application was filed;

"(4) the use or purpose for which the appropriation is to be made;

"(5) the amount or volume of water authorized to be appropriated for each purpose;

"(6) a general description of the source of supply from which the appropriation is proposed to be made;

"(7) the time within which construction or work must begin and the time within which it must be completed; and

"(8) any other information the board prescribes.

"(c) If the appropriation is for irrigation, the commission shall also place in the permit a description and statement of the approximate area of the land to be irrigated.

**"Sec. 11.136. Recording of Permit**

"(a) The commission shall transmit the permit by registered mail to the county clerk of the county in which the appropriation is to be made.

"(b) When the county clerk receives the permit and is paid the recording fee (as prescribed by Article 3930, Revised Civil Statutes of Texas, 1925, as amended), he shall file and record the permit in a well-bound book kept for that purpose. He shall index the permit alphabetically in the name of the applicant and of the stream or source of water supply. After he has recorded the permit, the county clerk shall deliver the permit, on demand, to the applicant.

"(c) When the permit is filed in the office of the county clerk, it is constructive notice of:

"(1) the filing of the application;

"(2) the issuance of the permit; and

"(3) all the rights arising under the filing of the application and the issuance of the permit.

**"Sec. 11.137. Seasonal Permits**

"(a) The commission may issue seasonal permits in the same manner that it issues regular permits. The provisions of this chapter governing issuance of regular permits apply to issuance of seasonal permits.

"(b) The right to take, use, or divert water under a seasonal permit is limited to the portion or portions of the calendar year stated in the permit.

"(c) In a seasonal permit, the commission shall specify the conditions necessary to fully protect prior appropriations or vested rights on the stream.

**"Sec. 11.138. Temporary Permits**

"(a) The commission may issue temporary permits for beneficial purposes to the extent that they do not interfere with or adversely affect prior appropriations or vested rights on the stream. The provisions of this chapter governing issuance of regular permits apply to issuance of temporary permits.

"(b) The commission may prescribe rules governing notice and procedure for the issuance of temporary permits.

"(c) As between temporary permits, the one applied for first has priority.

"(d) The commission may not issue a temporary permit for a period exceeding three calendar years.

"(e) A temporary permit does not vest in its holder a permanent right to the use of water.

"(f) A temporary permit expires and shall be cancelled by the commission in accordance with the terms of the permit.

"(g) The board may prescribe by rule the fees to be paid for issuance of temporary permits, but no fee for issuance or extension of a temporary permit shall exceed \$500.

**"Sec. 11.139. Emergency Permits**

"(a) The commission may grant an emergency permit for the diversion and use of water for a period of not more than 30 days if it finds that emergency conditions exist which threaten the public health, safety,

and welfare and which override the necessity to comply with established statutory procedures.

“(b) An emergency permit may be granted for a period of not more than 30 days, and no extension or additional emergency permit may be granted at the expiration of the original permit.

“(c) An emergency permit may be granted under this section without the necessity to comply with statutory and other procedures required for granting other permits issued by the commission.

“(d) The board may prescribe rules and adopt fees which are necessary to carry out the provisions of this section.

“(e) An emergency permit does not vest in the permittee any right to the diversion and use of water and shall expire and be cancelled in accordance with its terms.

**“Sec. 11.140. Permits for Storage for Project Development**

“The commission may issue permits for storage solely for the purpose of optimum development of projects. The commission may convert these permits to permits for beneficial use if application to have them converted is made to the commission.

**“Sec. 11.141. Date of Priority**

“When the commission issues a permit, the priority of the appropriation of water and the claimant's right to use the water date from the date of filing of the application.

**“Sec. 11.142. Domestic and Livestock Reservoir—Permit Exemption**

“Without obtaining a permit, a person may construct on his own property a dam or reservoir to impound or contain not more than 200 acre-feet of water for domestic and livestock purposes.

**“Sec. 11.143. Domestic and Livestock Reservoir—Use for Other Purposes**

“(a) The owner of a dam or reservoir exempted under Section 11.142 of this code who desires to use water from the dam or reservoir for purposes other than domestic or livestock use shall obtain a permit to do so. He may obtain a regular permit, a seasonal permit, or a permit for a term of years. He may elect to obtain the permit by proceeding under this section or under the other provisions of this chapter governing issuance of permits.

“(b) If the applicant elects to proceed under this section, he shall submit to the department a sworn application, on a form furnished by the department, containing the following information:

“(1) the name and post-office address of the applicant;

“(2) the nature and purpose of the use and the amount of water to be used annually for each purpose;

“(3) the major watershed and the tributary (named or unnamed) on which the dam or reservoir is located;

“(4) the county in which the dam or reservoir is located;

“(5) the approximate distance and direction from the county seat of the county to the location of the dam or reservoir;

“(6) the survey or the portion of the survey on which the dam or reservoir is located and, to the best of the applicant's knowledge and belief, the distance and direction of the midpoint of the dam or reservoir from a corner of the survey, which information the executive director may require to be marked on an aerial photograph or map furnished by the department;

“(7) the approximate surface area, to the nearest acre, of the reservoir when it is full and the average depth in feet when it is full; and

"(8) the approximate number of square miles in the drainage area above the dam or reservoir.

"(c) If the permit is sought for irrigation, the application must also specify:

"(1) the total number of irrigable acres in the area;

"(2) the number of acres to be irrigated within the area in any one year; and

"(3) the approximate distance and direction of the land to be irrigated from the midpoint of the dam or reservoir.

"(d) Before the commission may approve the application and issue the permit, it shall give notice and hold a hearing as prescribed by this section.

"(e) In the notice, the commission shall:

"(1) state the name and post-office address of the applicant;

"(2) state the date the application was filed;

"(3) state the purpose and extent of the proposed appropriation of water;

"(4) identify the source of supply and the place where the water is stored; and

"(5) specify the time and place of the hearing.

"(f) The notice shall be published only once, at least 20 days before the date stated in the notice for the hearing on the application, in a newspaper having general circulation in the county where the dam or reservoir is located. At least 15 days before the date set for the hearing, the commission shall transmit a copy of the notice by first-class mail to each person whose claim or appropriation has been filed with the department and whose diversion point is downstream from that described in the application.

"(g) The applicant shall pay the filing fee prescribed by Section 12-111(b) of this code at the time he files the application.

"(h) The commission shall approve the application and issue the permit as applied for in whole or part if it determines that:

"(1) there is unappropriated water in the source of supply;

"(2) the applicant has met the requirements of this section;

"(3) the water is to be used for a beneficial purpose;

"(4) the proposed use is not detrimental to the public welfare or to the welfare of the locality; and

"(5) the proposed use will not impair existing water rights.

**"Sec. 11.144. Approval for Alterations**

"All holders of permits and certified filings shall obtain the approval of the commission before making any alterations, enlargements, extensions, or other changes to any reservoir, dam, main canal, or diversion work on which a permit has been granted or a certified filing recorded. A detailed statement and plans for alterations or changes shall be filed with the department and approved by the commission before the alterations or changes are made. This section does not apply to the ordinary maintenance or emergency repair of the facility.

**"Sec. 11.145. When Construction Must Begin**

"(a) If a person's permit is for appropriation by direct diversion, he shall begin construction of the proposed facilities within 90 days after the date his permit is issued. He shall work diligently and continuously to the completion of the construction. The commission may, by entering an order of record, extend the time for beginning construction for a period not to exceed 12 months after the date the permit was issued.

“(b) If the permit contemplates construction of a storage reservoir, construction shall begin within the time fixed by the commission, not to exceed two years after the date the permit is issued. The commission, by entering an order of record, may extend the time for beginning construction. The board may fix fees, not to exceed \$1,000, for extending the time to begin construction of reservoirs.

**“Sec. 11.146. Forfeitures and Cancellation of Permit for Inaction**

“(a) If a permittee fails to begin construction within the time specified in Section 11.145 of this code, he forfeits all rights to the permit, subject to notice and hearing as prescribed by this section.

“(b) After beginning construction if the appropriator fails to work diligently and continuously to the completion of the work, the appropriation is subject to cancellation in whole or part, subject to notice and hearing as prescribed by this section.

“(c) If the commission believes that an appropriation or permit should be declared forfeited under this section or any other sections of this code, it should give the appropriator or permittee 30 days notice and provide him with an opportunity to be heard.

“(d) After the hearing, the commission by entering an order of record may cancel the appropriation in whole or part. The commission shall immediately transmit a certified copy of the cancellation order by certified mail to the county clerk of the county in which the permit is recorded. The county clerk shall record the cancellation order.

“(e) If a permit has been issued for the use of water, the water is not subject to a new appropriation until the permit has been cancelled in whole or part as provided by this section.

“(f) Except as provided by Subchapter E of this chapter, none of the provisions of this code may be construed as intended to impair, cause, or authorize or may impair, cause, or authorize the forfeiture of any rights acquired by any declaration of appropriation or by any permit if the appropriator has begun or begins the work and development contemplated by his declaration of appropriation or permit within the time provided by the law under which the declaration of appropriation was made or the permit was granted and has prosecuted or continues to prosecute it with all reasonable diligence toward completion.

**“Sec. 11.147. Effects of Permit on Bays and Estuaries**

“In its consideration of an application for a permit to store, take, or divert water, the commission shall assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas.

“[Sections 11.148–11.170 reserved for expansion]

**“SUBCHAPTER E. CANCELLATION OF PERMITS, CERTIFIED FILINGS, AND CERTIFICATES OF ADJUDICATION FOR NONUSE**

**“Sec. 11.171. Definitions**

“As used in this subchapter:

“(1) ‘Other interested person’ means any person other than a record holder who is interested in the permit or certified filing or any person whose direct interest would be served by the cancellation of the permit or certified filing in whole or part.

“(2) ‘Certified filing’ means a declaration of appropriation or affidavit that was filed with the State Board of Water Engineers under the provisions of Section 14, Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended.

“(3) ‘Certificate of adjudication’ means a certificate issued by the commission under Section 11.323 of this code.



**"Sec. 11.172. General Principle**

"A permit, certified filing, or certificate of adjudication is subject to cancellation in whole or part for 10 years nonuse as provided by this subchapter.

**"Sec. 11.173. Cancellation in Whole**

"If no part of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has been put to beneficial use at any time during the 10-year period immediately preceding the cancellation proceedings authorized by this subchapter, then the appropriation is presumed to have been wilfully abandoned, and the permit, certified filing, or certificate of adjudication is subject to cancellation in whole as provided by this subchapter.

**"Sec. 11.174. Department to Initiate Proceedings**

"When the department finds that its records do not show that any water has been beneficially used under a permit, certified filing, or certificate of adjudication during the past 10 years, the executive director shall initiate proceedings, terminated by public hearing, to cancel the permit, certified filing, or certificate of adjudication.

**"Sec. 11.175. Notice**

"(a) At least 30 days before the date of the hearing, the commission shall send notice of the hearing to the holder of the permit, certified filing, or certificate of adjudication being considered for cancellation. Notice shall be sent by certified mail, return receipt requested, to the last address shown by the records of the commission. The commission shall also send notice by regular mail to all other holders of permits, certified filings, certificates of adjudication, and claims of water rights pursuant to Section 11.303 of this code in the same watershed.

"(b) The commission shall also have the notice of the hearing published once a week for two consecutive weeks, at least 30 days before the date of the hearing, in a newspaper published in each county in which diversion of water from the source of supply was authorized or proposed to be made and in each county in which the water was authorized or proposed to be used, as shown by the records of the commission. If in any such county no newspaper is published, then the notice may be published in a newspaper having general circulation in the county.

**"Sec. 11.176. Hearing**

"The commission shall hold a hearing and shall give the holder of the permit, certified filing, or certificate of adjudication and other interested persons an opportunity to be heard and to present evidence that water has, or has not, been beneficially used for the purposes authorized by the permit, certified filing, or certificate of adjudication during the 10-year period.

**"Sec. 11.177. Commission Finding; Action**

"At the conclusion of the hearing if the commission finds that no water has been beneficially used for authorized purposes during the 10-year period, the appropriation is deemed to have been wilfully abandoned, of no further force and effect, and the commission shall cancel the permit, certified filing, or certificate of adjudication.

**"Sec. 11.178. Cancellation in Part**

"If some part of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has not been put to beneficial use at any time during the 10-year period immediately preceding the cancellation proceedings authorized by this subchapter, then the permit, certified filing, or certificate of adjudication is subject to partial

cancellation, as provided by this subchapter, to the extent of the 10 years nonuse.

**"Sec. 11.179. Department May Initiate Proceedings**

"When the department finds that its records do not show proof that some portion of the water has been used during the past 10 years, the executive director may initiate proceedings, terminated by public hearing, to cancel the permit, certified filing, or certificate of adjudication in part.

**"Sec. 11.180. Notice**

"The commission shall give notice of the hearing as provided by Section 11.175 of this code.

**"Sec. 11.181. Hearing**

"The commission shall hold a hearing and shall give the holder of the permit, certified filing, or certificate of adjudication and other interested persons an opportunity to be heard and to present evidence on any matter pertinent to the questions at issue.

**"Sec. 11.182. Commission Finding; Action**

"(a) At the conclusion of the hearing, the commission shall cancel the permit, certified filing, or certificate of adjudication to the extent that it finds that:

"(1) any portion of the water appropriated under the permit, certified filing, or certificate of adjudication has not been put to an authorized beneficial use during the 10-year period;

"(2) the holder has not used reasonable diligence in applying the unused portion of the water to an authorized beneficial use; and

"(3) the holder has not been justified in the nonuse or does not then have a bona fide intention of putting the unused water to an authorized beneficial use within a reasonable time after the hearing.

"(b) In determining what constitutes a reasonable time as used in Subsection (a)(3) of this section, the commission shall give consideration to:

"(1) the expenditures made or obligations incurred by the holder in connection with the permit, certified filing, or certificate of adjudication;

"(2) the purpose to which the water is to be applied;

"(3) the priority of the purpose; and

"(4) the amount of time usually necessary to put water to a beneficial use for the same purpose when diligently developed.

**"Sec. 11.183. Reservoir**

"If the holder of a permit, certified filing, or certificate of adjudication has facilities for the storage of water in a reservoir, the commission may allow him to retain the impoundment to the extent of the conservation storage capacity of the reservoir for domestic, livestock, or recreation purposes.

**"Sec. 11.184. Municipal Certified Filing**

"Regardless of other provisions of this subchapter, no portion of a certified filing held by a city, town, village, or municipal water district, authorizing the use of water for municipal purposes, shall be cancelled if water has been put to use under the certified filing for municipal purposes at any time during the 10-year period immediately preceding the institution of cancellation proceedings.

**"Sec. 11.185. Effect of Inaction**

"Failure to initiate cancellation proceedings under this subchapter does not validate or improve the status of any permit, certified filing, or certificate of adjudication in whole or in part.

**"Sec. 11.186. Subsequent Proceedings on Same Water Right**

"Once cancellation proceedings have been initiated against a particular permit, certified filing, or certificate of adjudication and a hearing has been held, further cancellation proceedings shall not be initiated against the same permit, certified filing, or certificate of adjudication within the five-year period immediately following the date of the hearing.

"[Sections 11.187–11.200 reserved for expansion]

**"SUBCHAPTER F. ARTESIAN WELLS****"Sec. 11.201. Artesian Well Defined**

"An artesian well is an artificial water well in which the water, when properly cased, will rise by natural pressure above the first impervious stratum below the surface of the ground.

**"Sec. 11.202. Right to Drill Artesian Well**

"A person is entitled to drill an artesian well on his own land for domestic purposes or for stock raising without complying with the general provisions of this code regulating the use of water. However, he shall have the well properly and securely cased, and when water is reached containing mineral or other substances injurious to vegetation or agriculture, he shall have the well securely capped or its flow controlled so as not to injure another person's land or shall fill the well so as to prevent the water from rising above the first impervious stratum below the surface of the ground.

**"Sec. 11.203. Artesian Well: Drilling Record**

"(a) A person who drills an artesian well or has one drilled shall keep a complete and accurate record of the depth, thickness, and character of the different strata penetrated and when the well is completed shall transmit a copy of the record to the department by registered mail.

"(b) A person who violates any provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

**"Sec. 11.204. Report of New Artesian Well**

"Within one year after an artesian well is drilled, the owner or operator shall transmit to the department a sworn report stating the result of the drilling operation, the use to which the water will be applied, and the contemplated extent of the use.

**"Sec. 11.205. Wasting Water From Artesian Well**

"(a) Unless the water from an artesian well is used for a purpose and in a manner in which it may be lawfully used on the owner's land, it is waste to wilfully cause or knowingly permit the water to run off the owner's land or to percolate through the stratum above which the water is found.

"(b) It is not waste to use water from an artesian well, if suitable, for proper irrigation of trees on a street, road, or highway or for ornamental ponds or fountains or for the propagation of fish.

"(c) A person who commits waste as defined in this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$500 or by confinement in the county jail for not more than 90 days or by both.

**"Sec. 11.206. Improperly Cased Well: Nuisance**

"An artesian well that is not tightly cased, capped, and furnished with mechanical appliances that readily and effectively prevent water from flowing out of the well and running over the surface of the ground about the well or wasting through the strata through which it passes is a public nuisance and subject to abatement by the commission.

**"Sec. 11.207. Annual Report**

"(a) Not later than March 1 of each year, a person who during any part of the preceding calendar year owned or operated an artesian well for any purpose other than domestic use shall file a report to the department on a form supplied by the department.

"(b) The report shall state:

"(1) the quantity of water which was obtained from the well;

"(2) the nature of the uses to which the water was applied;

"(3) the change in the level of the well's water table; and

"(4) other information required by the department.

"(c) If water from the well was used for irrigation, the report shall also state the acreage and yield of each crop irrigated.

"[Sections 11.208–11.300 reserved for expansion]

**"SUBCHAPTER G. WATER RIGHTS ADJUDICATION ACT****"Sec. 11.301. Short Title**

"This subchapter may be cited as the Water Rights Adjudication Act.

**"Sec. 11.302. Declaration of Policy**

"The conservation and best utilization of the water resources of this state are a public necessity, and it is in the interest of the people of the state to require recordation with the commission of claims of water rights which are presently unrecorded, to limit the exercise of these claims to actual use, and to provide for the adjudication and administration of water rights to the end that the surface-water resources of the state may be put to their greatest beneficial use. Therefore, this subchapter is in furtherance of the public rights, duties, and functions mentioned in this section and in response to the mandate expressed in Article XVI, Section 59 of the Texas Constitution and is in the exercise of the police powers of the state in the interest of the public welfare.

**"Sec. 11.303. Recordation and Limitation of Certain Water Rights Claims**

"(a) This section applies to:

"(1) claims of riparian water rights;

"(2) claims under Section 11.143 of this code to impound, divert, or use state water for other than domestic or livestock purposes, for which no permit has been issued;

"(3) claims of water rights under the Irrigation Acts of 1889 and 1895 which were not filed with the State Board of Water Engineers in accordance with the Irrigation Act of 1913, as amended; and

"(4) other claims of water rights except claims under permits or certified filings.

"(b) Any claim to which this section applies shall be recognized only if valid under existing law and only to the extent of the maximum actual application of water to beneficial use without waste during any calendar year from 1963 to 1967, inclusive. However, in any case where a claimant of a riparian right has prior to August 28, 1967, commenced or completed the construction of works designed to apply a greater quantity of water to beneficial use, the right shall be recognized to the extent of the maximum amount of water actually applied to beneficial use without waste during any calendar year from 1963 to 1970, inclusive.

"(c) On or before September 1, 1969, every person claiming a water right to which this section applies shall file with the commission a statement setting forth:

"(1) the name and address of the claimant;

"(2) the location and the nature of the right claimed;

"(3) the stream or watercourse and the river basin in which the right is claimed;

"(4) the date of commencement of works;

"(5) the dates and volumes of use of water; and

"(6) other information the commission may require to show the nature and extent of the claim.

"(d) A person who files a statement as provided in this section shall certify under oath that the statements made in support of his claim are true and correct to the best of his knowledge and belief.

"(e) A claimant who desires recognition of a right based on use from 1968 to 1970, inclusive, as provided in Subsection (b) of this section shall file an additional sworn statement on or before July 1, 1971.

"(f) The commission shall prescribe forms for the sworn statements required by this section, but use of the commission forms is not mandatory.

"(g) On or before January 1, 1968, and June 1, 1969, the commission shall cause notice of the requirements of this section to be published once each week for two consecutive weeks in newspapers having general circulation in each county of the state and by first-class mail to each user of surface water who has filed a report of water use with the commission.

"(h) On sworn petition, notice, and hearing as prescribed for applications for permits and upon finding of extenuating circumstances and good cause shown for failure to timely file, the commission may authorize the filing of the sworn statement or statements required by this section until entry of a preliminary determination of claims of water rights in accordance with Section 11.309 of this code which includes the area described in the petition or, if a preliminary determination has not been entered, until September 1, 1974.

"(i) Since the filing of all claims to use public water is necessary for the conservation and best utilization of the water resources of the state, failure to file a sworn statement in substantial compliance with this section extinguishes and bars any claim of water rights to which this section applies.

"(j) A sworn statement submitted under this section is binding on the person submitting it and his successors in interest, but is not binding on the commission or any other person in interest.

"(k) Nothing in this section shall be construed to recognize any water right which did not exist before August 28, 1967.

"(l) This section does not apply to use of water for domestic or livestock purposes.

#### **"Sec. 11.304. Adjudication of Water Rights**

"The water rights in any stream or segment of a stream may be adjudicated as provided in this subchapter:

"(1) on the commission's own motion;

"(2) on petition to the commission signed by 10 or more claimants of water rights from the source of supply; or

"(3) on petition of the board.

#### **"Sec. 11.305. Investigation**

"(a) Promptly after a petition is filed under Section 11.304 of this code, the commission shall investigate the facts and conditions necessary to determine whether the adjudication would be in the public interest. If the commission finds that an adjudication would be in the public interest, it shall enter an order to that effect, designating the stream or segment

to be adjudicated. The executive director shall have an investigation made of the area involved in order to gather relevant data and information essential to the proper understanding of the claims of water rights involved. The results of the investigation shall be reduced to writing and made a matter of record in the commission's office.

"(b) In connection with the investigation, the executive director shall have a map or plat made showing with substantial accuracy the course of the stream or segment and the location of reservoirs, diversion works, and places of use, including lands which are being irrigated or have facilities for irrigation.

**"Sec. 11.306. Notice of Adjudication**

"(a) The commission shall prepare a notice of adjudication which describes the stream or segment to be adjudicated and the date by which all claims of water rights in the stream or segment shall be filed with the commission. The date shall not be less than 90 days after the date the notice is issued.

"(b) The notice shall be published once a week for two consecutive weeks in one or more newspapers having general circulation in the counties in which the stream or segment is located.

"(c) The notice shall also be sent by first-class mail to each claimant of water rights whose diversion is within the stream or segment to be adjudicated, to the extent that the claimants can reasonably be ascertained from the records of the department.

**"Sec. 11.307. Filing of Sworn Claims**

"(a) Every person claiming a water right of any nature, except for domestic or livestock purposes, from the stream or segment under adjudication shall file a sworn claim with the commission within the time prescribed in the notice of adjudication, including any extensions of the prescribed time, setting forth:

"(1) the name and post-office address of the claimant;

"(2) the location and nature of the right claimed, including a description of any permit or certified filing under which the claim is made;

"(3) the purpose of the use;

"(4) a description of works and irrigated land; and

"(5) all other information necessary to show the nature and extent of the claim.

"(b) The commission shall prescribe forms for claims, but use of the commission forms is not mandatory.

**"Sec. 11.308. Hearings on Claims; Notice**

"The commission shall set a time and a place for hearing all claims. Not less than 30 days before commencement of the hearings, the commission shall give notice of the hearings by certified mail to all persons who have filed claims in accordance with Section 11.307 of this code, or this notice may be included in the notice of adjudication provided in Section 11.306 of this code. The hearings shall be conducted as provided in Section 11.337 of this code.

**"Sec. 11.309. Preliminary Determination of Claims**

"(a) On completion of the hearings, the commission shall make a preliminary determination of the claims to water rights under adjudication.

"(b) One copy of the preliminary determination shall be furnished without charge to each person who filed a claim in accordance with Section 11.307 of this code. Additional copies of the preliminary determination shall be made available for public inspection at convenient locations

throughout the river basin, as designated by the commission. Copies shall also be made available to other interested persons at a reasonable price, based on the cost of reproduction.

**"Sec. 11.310. Evidence Open to Inspection**

"All evidence presented to or considered by the commission shall be open to public inspection for a period of not less than 60 days, as fixed by the commission, after the notice prescribed in Section 11.312 of this code is issued.

**"Sec. 11.311. Date for Filing Contests**

"The commission shall set a date for filing contests on the preliminary determination, which date shall not be less than 30 days after the period for public inspection of the evidence has closed.

**"Sec. 11.312. Notice of Preliminary Determination; Copies**

"(a) Promptly after the preliminary determination is made as provided in Section 11.309 of this code, the commission shall publish notice of the determination once a week for two consecutive weeks in one or more newspapers having general circulation in the river basin in which the stream or segment that is the subject of the adjudication is located.

"(b) The commission shall also send notice by first-class mail to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the department.

"(c) Each notice shall state:

"(1) the place and the period of time that the preliminary determination and evidence presented to or considered by the commission will be open for public inspection;

"(2) the locations throughout the river basin where copies of the preliminary determination will be available for public inspection;

"(3) the method of ordering copies of the preliminary determination and the charge for copies;

"(4) the date by which contests on the preliminary determination must be filed.

**"Sec. 11.313. Filing Contests**

"(a) Any water right claimant affected by the preliminary determination, including any claimant to water rights within the river basin but outside the stream or segment under adjudication, who disputes the preliminary determination may within the time for filing contests prescribed by the commission in the notice, including any extension of the time, file a written contest with the commission, stating with reasonable certainty the grounds of his contest.

"(b) The statement filed to contest a preliminary determination must be verified by an affidavit of the contestant, his agent, or his attorney.

"(c) If the contest is directed against the preliminary determination of the water rights of other claimants, a copy shall be served on each of these claimants or his attorney by certified mail, and proof of service shall be filed with the commission.

**"Sec. 11.314. Hearing on Contest; Notice**

"After the time for filing contests has expired, the commission shall prepare a notice setting forth the part of the preliminary determination to which each contest is directed and the time and place of a hearing on the contest. The notice shall be sent to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records

of the commission. The hearing shall be conducted as provided in Section 11.337 of this code.

**"Sec. 11.315. Final Determination**

"On completion of the hearings on all contests, the commission shall make a final determination of the claims to water rights under adjudication. The commission shall send a copy of the final determination and any modification of the final determination to each claimant whose rights are adjudicated and to each contesting party.

**"Sec. 11.316. Application for Rehearing**

"Within 30 days from the date of the final determination, any affected party may apply to the commission for a rehearing. Applications for rehearing which in the opinion of the commission are without merit may be denied without notice to other parties, but no application for rehearing shall be granted without notice to each claimant whose rights are adjudicated and to each contesting party.

**"Sec. 11.317. Filing Final Determination With District Court**

"(a) As soon as practicable after the disposition of all applications for rehearing, the commission shall file a certified copy of the final determination, together with all evidence presented to or considered by the commission, in a district court of any county in which the stream or segment under adjudication is located. However, if the stream or segment under adjudication includes all or parts of three or more counties and if 10 or more affected persons who appeared in the proceedings petition the commission to do so, the commission shall file the action in a convenient district court of a judicial district which is not within the river basin of the stream or segment under adjudication.

"(b) The commission shall obtain an order from the court fixing a time not less than 30 days from the date of the order for the filing of exceptions to the final determination and also fixing a time not less than 60 days from the date of the order for the commencement of hearings on exceptions.

"(c) The commission shall immediately give written notice of the court order by certified mail to all parties who appeared in the proceedings before the commission. The commission shall file proof of the service with the court.

**"Sec. 11.318. Exceptions to Final Determination**

"(a) Any affected person who appeared in the proceeding before the commission may file exceptions to the final determination. An exception must state with a reasonable degree of certainty the grounds for the exception and must specify the particular paragraphs and pages of the determination to which the exception is taken.

"(b) Three copies of the exceptions shall be filed in court, and a copy shall be served on the commission. The commission shall make copies of all exceptions available at a reasonable price, based on the cost of reproduction.

**"Sec. 11.319. Hearings on Exceptions**

"(a) The court shall hear any exceptions that have been filed. The commission and all affected persons who appeared in the proceedings before the commission are entitled to appear and be heard on the exceptions. The court may permit other parties in interest to appear and be heard for good cause shown.

"(b) The court may conduct nonjury hearings and proceedings at any convenient location within the state. Actual expenses incurred by the court outside its judicial district shall be taxed as costs.



**"Sec. 11.320. Scope of Judicial Review**

"(a) In passing on exceptions, the court shall determine all issues of law and fact independently of the commission's determination. The substantial evidence rule shall not be used. The court shall not consider any exception which was not brought to the commission's attention by application for rehearing. The court shall not consider any issue of fact raised by an exception unless the record of evidence before the commission reveals that the question was genuinely in issue before the commission.

"(b) A party in interest may demand a jury trial of any issue of fact, but the court may in its discretion have a separate trial with a separate jury of any such issue.

"(c) The legislature declares that the provisions of this section are not severable from the remainder of this subchapter and that this subchapter would not have been passed without the inclusion of this section. If this section is for any reason held invalid, unconstitutional, or inoperative in any way, the holding applies to the entire subchapter so that the entire subchapter is null and void.

**"Sec. 11.321. Evidence**

"Any exception heard by the court without a jury may be resolved on the record of evidence before the commission, or the court may take additional evidence or direct that additional evidence be heard by the commission.

**"Sec. 11.322. Final Decree**

"(a) After the final hearing, the court shall enter a decree affirming or modifying the order of the commission.

"(b) The court may assess the costs as it deems just.

"(c) An appeal may be taken from the decree of the court in the same manner and with the same effect as in other civil cases.

"(d) The final decree in every water right adjudication is final and conclusive as to all existing and prior rights and claims to the water rights in the adjudicated stream or segment of a stream. The decree is binding on all claimants to water rights outside the adjudicated stream or segment of a stream.

"(e) Except for domestic and livestock purposes or rights subsequently acquired by permit, a water right is not recognized in the adjudicated stream or segment of a stream unless the right is included in the final decree of the court.

**"Sec. 11.323. Certificate of Adjudication**

"(a) When a final determination of the rights to the waters of a stream has been made in accordance with the procedure provided in this subchapter and the time for a rehearing has expired, the commission shall issue to each person adjudicated a water right a certificate of adjudication, signed by the chairman and bearing the seal of the commission.

"(b) In the certificate, the commission shall include:

"(1) a reference to the final decree;

"(2) the name and post-office address of the holder of the adjudicated right;

"(3) the priority, extent, and purpose of the adjudicated right and, if the right is for irrigation, a description of the irrigated land; and

"(4) all other information in the decree relating to the adjudicated right.

**"Sec. 11.324. Recordation of Certificate**

"(a) The commission shall transmit the certificate of adjudication or a true copy to the county clerk of each county in which the appropriation is made.

"(b) On receipt of the recording fee from the holder of the certificate, the county clerk shall file and record the certificate in a well-bound book provided and kept for that purpose only. The clerk shall index the certificate alphabetically under the name of the holder of the certificate of adjudication and under the name of the stream or source of water supply.

"(c) When a certificate of adjudication is filed and recorded as provided in this section, the county clerk shall deliver the certificate on demand to the holder.

**"Sec. 11.325. Water Divisions**

"The board shall divide the state into water divisions for the purpose of administering adjudicated water rights. Water divisions may be created from time to time as the necessity arises. The divisions shall be constituted to secure the best protection to the holders of water rights and the most economical supervision on the part of the state.

**"Sec. 11.326. Appointment of Watermaster**

"(a) The executive director may appoint one watermaster for each water division.

"(b) A watermaster holds office until a successor is appointed. The executive director may remove a watermaster at any time.

"(c) The executive director may employ assistant watermasters and other employees necessary to aid a watermaster in the discharge of his duties.

"(d) In a water division in which the office of watermaster is vacant, the executive director has the powers of a watermaster.

"(e) The executive director shall supervise and generally direct the watermaster in the performance of his duties. A watermaster is responsible to the executive director for the proper performance of his duties.

"(f) A person dissatisfied with any action of a watermaster may apply to the executive director for relief.

**"Sec. 11.327. Duties of Watermaster**

"(a) A watermaster shall divide the water of the streams or other sources of supply of his division in accordance with the adjudicated water rights.

"(b) A watermaster shall regulate or cause to be regulated the controlling works of reservoirs and diversion works in time of water shortage, as is necessary because of the rights existing in the streams of his division, or as is necessary to prevent the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are lawfully entitled.

"(c) A watermaster may regulate the distribution of water from any system of works that serves users whose rights have been separately determined.

**"Sec. 11.328. Watermaster's Notice Posted**

"If, in the performance of his duties, a watermaster regulates diversion works or the controlling works of reservoirs, he shall attach to the works a written notice, properly dated and signed, stating that the works have been properly regulated and are wholly under his control. The notice is legal notice to all parties interested in the diversion and distribution of the water served by the diversion works or reservoir.

**"Sec. 11.329. Compensation and Expenses of Watermaster**

"(a) The department shall pay the compensation and necessary expenses of a watermaster, assistant watermasters, and other necessary employees, but the holders of water rights that have been determined or adjudicated and are to be administered by the watermaster shall reimburse the department for the compensation and expenses.

"(b) After the adjudication decree becomes final, the executive director shall notify each holder of water rights under the decree of the amount of compensation and expenses that will be required annually for the administration of the water rights so determined.

"(c) The commission shall hold a public hearing to determine the apportionment of the costs of administration of adjudicated water rights among the holders of the rights. After a public hearing, the commission shall issue an order assessing the annual cost against the holders of water rights to whom the water will be distributed under the final decree. The commission shall equitably apportion the costs. The executive director may provide for payments in installments and shall specify the dates by which payments shall be made to the department.

"(d) The executive director shall transmit all collections under this section to the State Treasurer.

"(e) No water shall be diverted, taken, or stored by, or delivered to, any person while he is delinquent in the payment of his assessed costs.

"(f) An order of the commission assessing costs remains in effect until the commission issues a further order. The commission may modify, revoke, or supersede an order assessing costs with a subsequent order. The commission may issue supplementary orders from time to time to apply to new diversions.

**"Sec. 11.330. Outlet for Free Passage of Water**

"The owner of any works for the diversion or storage of water shall maintain to the satisfaction of the commission a substantial headgate at the point of diversion, or a gate on each discharge pipe of a pumping plant, constructed so that it can be locked at the proper place by the watermaster, or a suitable outlet in a dam to allow the free passage of water that the owner of the dam is not entitled to divert or impound, the suitability of the outlet to be determined by the commission.

**"Sec. 11.331. Measuring Devices**

"The commission may require the owner of any works for the diversion, taking, storage, or distribution of water to construct and maintain suitable measuring devices at points that will enable the watermaster to determine the quantities of water to be diverted, taken, stored, released, or distributed in order to satisfy the rights of the respective users.

**"Sec. 11.332. Installation of Flumes**

"The commission may order flumes to be installed along the line of any ditch if necessary for the protection of water rights or other property.

**"Sec. 11.333. Failure to Comply With Commission Directions**

"If the owner of waterworks using state water refuses or neglects to comply with the directions of the commission given pursuant to Section 11.330, 11.331, or 11.332 of this code, the commission, after 10 days notice or after a period of additional time that is reasonable under the circumstances, may order the watermaster to make adjustments of the control works to prevent the owner of the works from diverting, taking, storing, or distributing any water until he has fully complied with the order of the commission.

**"Sec. 11.334. Suit Against Department for Injury**

"Any person who is injured by an act of the department under this subchapter may bring suit against the commission to review the action or to obtain an injunction. If the water right involved has been adjudicated as provided in this subchapter, the court shall issue an injunction only if it is shown that the department has failed to carry into effect the decree adjudicating the water right.

**"Sec. 11.335. Administration of Water Rights Not Adjudicated**

"(a) If any area in which water rights of record in the office of the department have not been adjudicated, the claimants of the rights and the commission may enter into a written agreement for their administration.

"(b) An agreement made under authority of this section shall provide:

"(1) the basis and manner of distribution of the water to which the agreement relates;

"(2) the services of a special watermaster, and assistants if necessary, to carry out the agreement; and

"(3) the allocation, collection, and payment of the annual costs of administration.

"(c) An agreement to administer unadjudicated water rights shall be recorded in the offices of the department and of the county clerk of each county in which any of the works or lands affected by the agreement are located.

"(d) The administration of water rights by agreement is governed by the provisions of this subchapter except as regards allocation and payment of the expenses of the administration.

"(e) No agreement authorized by this section impairs any vested right to the use of water or creates any additional rights to the use of water.

**"Sec. 11.336. Administration of Permits Issued After Adjudication**

"Permits, other than temporary permits, that are issued by the commission to appropriate water from an adjudicated stream or segment are subject to administration in the same manner as is provided in this subchapter for adjudicated water rights.

**"Sec. 11.337. Hearings: Notice and Procedure**

"(a) The commission shall give notice of a hearing or other proceeding it orders under this subchapter in the manner prescribed in the procedural rules of the commission, unless this subchapter specifically provides otherwise.

"(b) In any proceeding in any part of the state, the commission may:

"(1) take evidence, including the testimony of witnesses;

"(2) administer oaths;

"(3) issue subpoenas and compel the attendance of witnesses in the same manner as subpoenas are issued out of the courts of the state;

"(4) compel witnesses to testify and give evidence; and

"(5) order the taking of depositions and issue commissions for the taking of depositions in the same manner as depositions are obtained in civil actions.

"(c) Evidence may be taken by a duly appointed reporter before the commission or before an authorized representative who has the power to administer oaths.

"(d) If a person neglects or refuses to comply with an order or subpoena issued by the commission or refuses to testify on any matter about

which he may be lawfully interrogated, the commission may apply to a district court of the county in which the proceeding is held to punish him in the manner provided by law for such disobedience in civil actions.

"(e) The commission may adjourn its proceedings from time to time and from place to place.

"(f) When a proceeding before the commission is concluded, the commission shall render a decision as to the matters concerning which the proceeding was held.

**"Sec. 11.338. Cancellation of Water Rights**

"Nothing in this subchapter recognizes any abandoned or cancelled water right or impairs in any way the power of the commission under general law to forfeit, cancel, or find abandoned any water right, including adjudicated water rights.

**"Sec. 11.339. Underground Water Not Affected**

"This subchapter does not apply to underground water as defined in Chapter 52 of this code.

**"Sec. 11.340. Abatement of Certain Civil Suits**

"(a) Nothing in this subchapter prevents or prejudices a person who claims the right to divert water from a stream from filing and prosecuting to a conclusion a suit against other claimants of the right to divert or use water from the same stream. However, if the commission has ordered a determination of water rights as provided in this subchapter or if the commission orders such a determination within 90 days after notice of the filing of a suit, the suit shall be abated on the motion of the commission or any party in interest as to any issues involved in the water rights determination.

"(b) If a suit is abated as provided in Subsection (a) of this section, the court may grant or continue any temporary relief necessary to preserve the status quo pending a final determination of the water rights involved.

**"Sec. 11.341. Limitation on Actions**

"This subchapter does not affect any action or proceeding instituted before August 28, 1967, or any right accrued before that date except those specifically provided for in this subchapter.

"[Sections 11.342–11.400 reserved for expansion]

**"SUBCHAPTER H. COURT-APPOINTED WATERMASTER**

**"Sec. 11.401. Scope of Subchapter**

"The provisions of this subchapter apply to a suit if:

"(1) the state is a party;

"(2) the purpose of the suit is to determine the right of the parties to divert or use water of a surface stream; and

"(3) rights are asserted to use water in, or divert water to, not more than four counties.

**"Sec. 11.402. Appointment and Authority of Watermaster**

"(a) A court having jurisdiction over a suit described in Section 11.401 of this code may appoint a watermaster with power to allocate and distribute, under the supervision of the court, the water taken into judicial custody.

"(b) The court may not appoint a watermaster with authority to act both upstream and downstream from an existing reservoir on any surface stream of the state. However, once a watermaster is appointed, the construction of a new reservoir does not invalidate his appointment or restrict his authority over that portion of the stream contemplated by the original order of appointment.

"(c) Under terms and conditions prescribed by the court, the watermaster may incur necessary expenses, appoint necessary deputies and assistants, and perform duties and assume responsibilities delegated to him by the court.

**"Sec. 11.403. Compensation of Watermaster**

"The court shall fix the compensation of the watermaster and his staff.

**"Sec. 11.404. Expenses and Assessment of Costs of Watermaster**

"(a) The trial court shall assess the costs and expenses of the watermaster and his staff against all persons receiving an allocation of the water in judicial custody. The court shall assess the costs and expenses monthly or at other time intervals ordered by the court.

"(b) The court shall assess the costs and expenses on the basis of:

"(1) acreage;

"(2) acre-feet of allocated water;

"(3) per capita; or

"(4) any other formula the court, after notice and hearing, determines to be the most equitable.

"(c) During the pendency of an appeal, the trial court, in its discretion, may assess costs against some parties on one basis and against other parties on another basis.

"(d) The costs and expenses are not to be taxed as ordinary court costs, but are to be considered costs necessary to protect the rights and privileges of the parties receiving allocations of water during the litigation and are to be paid by those parties.

**"Sec. 11.405. Failure to Pay Assessed Costs**

"If the costs and expenses assessed are not paid within the time prescribed by the court, the court after notice and hearing may withdraw or limit allocations of water to any party failing or refusing to pay his share until all costs and expenses assessed against him are paid in full.

**"Sec. 11.406. Judicial Custody of Water During Appeal**

"If a party appeals the judgment of the trial court, that court may retain custody of the water which it has previously taken into judicial custody and over which it has appointed a watermaster. Until final judgment is entered in the case, the trial court has exclusive jurisdiction to administer, allocate, and distribute the water retained in its custody, as provided in Section 11.407 of this code.

**"Sec. 11.407. Allocation and Distribution of Water During Appeal**

"During the pendency of an appeal, the trial court shall limit the allocation and distribution of the water in its custody to the parties adjudicated to have a valid right to use the water. However, if any party prosecutes an appeal and files a supersedeas bond, the trial court shall make any necessary adjustments in the water allocations and allocate to that party the same amount of water that he received during the proceedings in the trial court.

**"Sec. 11.408. Retention of Watermaster During Appeal**

"During the pendency of an appeal, the trial court may retain the watermaster in office with the same authority he had during the trial proceedings.

**"Sec. 11.409. Violations of Court Orders**

"If a party violates any order of the trial court either during trial proceedings or during an appeal, the trial court may limit or withdraw his allocation of water until he corrects the violation to the satisfaction of the court.

**"CHAPTER 12. PROVISIONS GENERALLY APPLICABLE  
TO WATER RIGHTS****"SUBCHAPTER A. GENERAL PROVISIONS****"Section 12.001. Definitions**

"The definitions contained in Subchapter A, Chapter 11 of this code apply to this chapter.

"[Sections 12.002–12.010 reserved for expansion]

**"SUBCHAPTER B. GENERAL POWERS AND DUTIES  
RELATING TO WATER RIGHTS****"Sec. 12.011. Permit Applications**

"The department shall receive, administer, and act on all applications for permits and permit amendments:

"(1) to appropriate public water for beneficial use or storage; or

"(2) to construct works for the impoundment, storage, diversion, or transportation of public water.

**"Sec. 12.012. Evaluation of Outstanding Permits**

"The department shall actively and continually evaluate outstanding permits and certified filings and shall carry out measures to cancel wholly or partially the certified filings and permits that are subject to cancellation.

**"Sec. 12.013. Rate-Fixing Power**

"(a) The commission shall fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12 of this code.

"(b) The term 'political subdivision' when used in this section means incorporated cities, towns or villages, counties, river authorities, water districts, and other special purpose districts.

"(c) The commission in reviewing and fixing reasonable rates for furnishing water under this section may use any reasonable basis for fixing rates as may be determined by the commission to be appropriate under the circumstances of the case being reviewed; provided, however, the commission may not fix a rate which a political subdivision may charge for furnishing water which is less than the amount required to meet the debt service and bond coverage requirements of that political subdivision's outstanding debt.

"(d) The commission's jurisdiction under this section relating to incorporated cities, towns, or villages shall be limited to water furnished by such city, town, or village to another political subdivision on a wholesale basis.

"(e) The commission may establish interim rates and compel continuing service during the pendency of any rate proceeding.

"(f) The commission may order a refund or assess additional charges from the date a petition for rate review is received by the commission of the difference between the rate actually charged and the rate fixed by the commission, plus interest at the statutory rate.

"(g) No action or proceeding commenced prior to January 1, 1977, before the Texas Water Rights Commission shall be affected by the enactment of this section.

"(h) Nothing herein contained shall affect the jurisdiction of the Public Utility Commission.

**"Sec. 12.014. Use of Department Surveys; Policy**

"The commission shall make use of surveys, studies, and investigations conducted by the staff of the department in order to ascertain the character of the principal requirements of the district regional division of the watershed areas of the state for beneficial uses of water, to the end that distribution of the right to take and use state water may be more equitably administered in the public interest, that privileges granted for recognized uses may be economically coordinated so as to achieve the maximum of public value from the state's water resources, and that the distinct regional necessities for water control and conservation and for control of harmful floods may be recognized.

**"Sec. 12.015. Power to Condemn Works**

"(a) The commission may condemn existing works if their existence or operation may, in the judgment of the commission, become a public menace or dangerous to life and property.

"(b) In all cases of proposed condemnation, the commission shall notify the interested party of the contemplated action and shall specify a time for him to appear and be heard.

**"Sec. 12.016. Power to Inspect**

"The executive director or his authorized agent may inspect any impoundment, diversion, or distribution works during construction to determine whether or not they are being constructed in a safe manner and whether or not they are being constructed according to the order of the commission.

**"Sec. 12.017. Power to Enter Land**

"Any member or employee of the department may enter any person's land, natural waterway, or artificial waterway for the purpose of making an investigation that would, in the judgment of the executive director, assist the department in the discharge of its duties.

"[Sections 12.018–12.050 reserved for expansion]

**"SUBCHAPTER C. PROJECTS****"Sec. 12.051. Federal Projects**

"(a) In this section:

"(1) 'Federal project' means an engineering undertaking or work to construct, enlarge, or extend a dam, lake, reservoir, or other water-storage or flood-control work or a drainage, reclamation, or canalization undertaking or any combination of these financed in whole or in part with funds of the United States.

"(2) 'Engineering report' means the plans, data, profiles, maps, estimates, and drawings prepared in connection with a federal project.

"(3) 'Federal agency' means the Corps of Engineers of the United States Army, the Bureau of Reclamation of the Department of Interior, the Soil Conservation Service of the Department of Agriculture, the United States Section of the International Boundary and Water Commission, or any other agency of the United States, the function of which includes the conservation, development, retardation by impounding, control, or study of the water resources of Texas or the United States.

"(b) When the governor receives an engineering report submitted by a federal agency seeking the governor's approval of a federal project, he shall immediately forward the report to the department for its study concerning the feasibility of the federal project.



“(c) The board shall hold a public hearing to receive the views of persons and groups who might be affected by the proposed federal project. The board shall publish notice of the time, date, place, nature, and purpose of the public hearing once each week for two consecutive weeks before the date stated in the notice in a newspaper having general circulation in the section of the state where the federal project is to be located or the work done.

“(d) After hearing all the evidence both for and against approval of the federal project, the board shall enter its order approving or disapproving the feasibility of the federal project, and the order shall include the board's reasons for approval or disapproval.

“(e) In determining feasibility, the board shall consider, among other relevant factors:

“(1) the effect of the federal project on water users on the stream as certified by the commission;

“(2) the public interest to be served;

“(3) the development of damsites to the optimum potential for water conservation;

“(4) the integration of the federal project with other water conservation activities;

“(5) the protection of the state's interests in its water resources; and

“(6) the engineering practicality of the federal project, including cost of construction, operation, and maintenance.

“(f) The board shall forward to the governor a certified copy of its order. The board's finding that the federal project is either feasible or not feasible is final, and the governor shall notify the federal agency that the federal project has been either approved or disapproved.

“(g) The provisions of this section do not apply to the state soil conservation board as long as that board is designated by the governor as the authorized state agency having supervisory responsibility to approve or disapprove of projects designed to effectuate watershed-protection and flood-prevention programs initiated in cooperation with the United States Department of Agriculture.

**“Sec. 12.052. Dam Safety**

“(a) The department shall make and enforce rules and orders and shall perform all other acts necessary to provide for the safe construction, maintenance, repair, and removal of dams located in this state.

“(b) Rules and orders made by the board shall be made after proper notice and hearing as provided in the rules of the board.

“(c) If the owner of a dam that is required to be constructed, reconstructed, repaired, or removed in order to comply with the rules and orders promulgated under Subsection (a) of this section wilfully fails or refuses to comply within the 30-day period following the date of the commission's order to do so or if a person wilfully fails to comply with any rule or other order issued by the commission under this section within the 30-day period following the effective date of the order, he is liable to a penalty of not more than \$1,000 a day for each day he continues to violate this section. The state may recover the penalty by suit brought for that purpose in the district court of Travis County.

“(d) Nothing in this section or in rules or orders made by the department shall be construed to relieve an owner or operator of a dam or reservoir of the legal duties, obligations, or liabilities incident to ownership or operation.

“[Sections 12.053–12.080 reserved for expansion]

## "SUBCHAPTER D. WATER DISTRICTS

**"Sec. 12.081. Continuing Right of Supervision of Districts Created Under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution**

"(a) The powers and duties of all districts and authorities created under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution are subject to the continuing right of supervision of the State of Texas by and through the department or its successor, and this supervision may include but is not limited to the authority to:

"(1) inquire into the competence, fitness, and reputation of the officers and directors of any district;

"(2) require, on its own motion or on complaint by any person, audits or other financial information, inspections, evaluations, and engineering reports;

"(3) issue subpoenas for witnesses to carry out its authority under this subsection;

"(4) institute investigations and hearings using examiners appointed by the commission; and

"(5) issue rules necessary to supervise the districts.

"(b) The provisions of this section shall not apply to any river authority encompassing 10 or more counties which was not subject to the continuing right of supervision of the State of Texas by and through the commission or its predecessors on June 10, 1969.

**"Sec. 12.082. Duty to Investigate Fresh Water Supply District Projects**

"(a) In this section:

"(1) 'District' means fresh water supply district.

"(2) 'Designated agent' means any licensed engineer selected by the executive director to perform the functions specified in this section.

"(b) The department shall investigate and report on the organization and feasibility of all districts created under Chapter 53 of this code which issue bonds under the provisions of that chapter.

"(c) A district that wants to issue bonds for any purpose shall submit to the department a written application for investigation, together with a copy of the engineer's report and a copy of the data, profiles, maps, plans, and specifications made in connection with the engineer's report.

"(d) The executive director or his designated agent shall examine the application and other information and shall visit the project and carefully inspect it. The executive director or his designated agent may ask for and shall be supplied with additional data and information requisite to a reasonable and careful investigation of the project and proposed improvements.

"(e) The executive director or his designated agent shall file with the commission written suggestions for changes and improvements and shall furnish a copy of the suggestions to the board of the district. If the commission finally approves or refuses to approve the project or the issuance of bonds for the improvements it shall make a full written report, file it in its office, and furnish a copy of the report to the board of the district.

"(f) During the course of construction of the project and improvements, no substantial alterations shall be made in the plans and specifications without the approval of the executive director. The executive

director or his designated agent has full authority to inspect the improvements at any time during construction to determine if the project is being constructed in accordance with approved plans and specifications.

"(g) If the executive director finds that the project is not being constructed in accordance with the approved plans and specifications, the executive director immediately shall notify in writing by certified mail each member of the board of the district and its manager. If, within 10 days after the notice is mailed, the board of the district does not take steps to insure that the project is being constructed in accordance with the approved plans and specifications, the executive director shall give written notice of that fact to the attorney general.

"(h) After the attorney general receives the notice, he may bring an action for injunctive relief, or he may bring quo warranto proceedings against the directors. Venue for either of these actions is exclusively in the district of Travis County.

**"Sec. 12.083. Districts; Creation, Investigations and Bonds**

"(a) The commission succeeds to the duties and responsibilities of the Texas Water Rights Commission with regard to the creation of districts as defined by Section 50.001(1) of this code and to approve or disapprove the issuance of the bonds of all such districts.

"(b) The executive director shall investigate and report on the organization and feasibility of all districts as defined by Section 50.001(1) of this code.

"[Sections 12.084–12.110 reserved for expansion]

**"SUBCHAPTER E. FEES**

**"Sec. 12.111. Fees**

"(a) The department shall charge and collect the fees prescribed by this section. The executive director shall make a record of fees prescribed when due and shall render an account to the person charged with the fees. Each fee is a separate charge and is in addition to other fees unless provided otherwise.

"(b) The fee for filing an application or petition is \$25 plus the cost of required notice.

"(c) The fee for recording an instrument in the office of the commission is \$1 per page.

"(d) The fee for the use of water for irrigation is 50 cents per acre to be irrigated.

"(e) The fee for the use of water for a steam or gas power plant or for cooling, condensing, or steam purposes is \$1 for each indicated horsepower.

"(f) The fee for impounding water, except under Section 11.142 of this code, is 50 cents per acre-foot of storage, based on the total holding capacity of the reservoir at normal operating level, provided that no additional fee shall be charged for recreational use for any impoundments of water now or hereafter permitted by the state or exempted from permit by statute.

"(g) The fee for other uses of water not specifically named in this section is \$1 per acre-foot.

"(h) A fee charged under this section for one use of water under a permit from the commission may not exceed \$5,000. The fee for each additional use of water under a permit for which the maximum fee is paid may not exceed \$1,000.

"(i) The fees prescribed by Subsections (d) through (g) of this section are one-time fees, payable when the application for an appropriation is made. However, if the total fee for a permit exceeds \$1,000, the applicant shall pay one-tenth of the fee when the application is filed, one-tenth within 30 days after notice is mailed to him that the permit is granted, and the balance before he begins to use water under the permit. If the applicant does not pay all of the amount owed before he begins to use water under the permit, his permit is annulled.

**"Sec. 12.112. Fees: Exemptions**

"The board and the Parks and Wildlife Commission are exempted from payment of any filing, recording, or use fees required by this code.

**"Sec. 12.113. Disposition of Fees, Etc.**

"(a) The department shall immediately deposit in the State Treasury the fees and charges it collects.

"(b) The department shall deposit all costs collected under Subchapter F, Chapter 11 of this code in the State Treasury to the credit of the water rights administration fund, from which the department shall pay all expenses necessary to efficiently administer and perform the duties described in Sections 11.325 through 11.335 of this code.

**"Sec. 12.114. Disposition of Fees Pending Determination**

"The department shall hold all fees, except filing fees, which are paid with an application until the commission finally determines whether the application should be granted. If the application is not granted, the department shall return the fees to the applicant.

"[Sections 12.115–12.140 reserved for expansion]

**"SUBCHAPTER F. PENALTIES**

**"Sec. 12.141. Violations of Rules, Orders, Certified Filings, and Permits**

"(a) Any person, association of persons, corporation, water improvement district, or irrigation district, or any agent, officer, employee, or representative of any of these named entities who wilfully violates any of the rules or orders promulgated by the board or any of the terms and conditions contained in declarations of appropriations (certified filings) and permits to appropriate water is liable to a civil penalty of not more than \$100 a day for each day that the violation continues to take place.

"(b) An action to collect the penalty provided in this section must be brought within two years from the date of the alleged violation.

"[Chapters 13–15 reserved for expansion]

**"SUBTITLE C. WATER DEVELOPMENT**

**"CHAPTER 16. PROVISIONS GENERALLY APPLICABLE TO WATER DEVELOPMENT**

**"SUBCHAPTER A. GENERAL PROVISIONS**

**"Section 16.001. Definitions**

"In this chapter:

"(1) 'Board' means the Texas Water Development Board.

"(2) 'Commission' means the Texas Water Commission.

"(3) 'Chairman' means the chairman of the Texas Water Development Board.

"(4) 'Executive director' means the executive director of the Texas Department of Water Resources.

"(5) 'Department' means the Texas Department of Water Resources.

“(6) ‘Political subdivision’ means a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party.

“(7) ‘Project’ means any engineering undertaking or work to conserve and develop surface or subsurface water resources of the state, including the control, storage, and preservation of its storm water and floodwater and the water of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including underground storage projects, filtration and water treatment plants including any system necessary to transport water from storage to points of distribution, or from storage to filtration and treatment plants, including facilities for transporting water therefrom to wholesale purchasers, by the acquisition, by purchase of rights in underground water, by the drilling of wells, or for any one or more of these purposes or methods.

“(8) ‘Bonds’ means all Texas Water Development Bonds now or hereafter authorized by the Texas Constitution.

“(9) ‘Waste’ has the same meaning as provided in Section 26.001 of this code.

“(10) ‘Water development bonds’ means the Texas Water Development Bonds authorized by Section 49–c, as amended, and Section 49–d, as amended, of Article III of the Texas Constitution.

“[Sections 16.002–16.010 reserved for expansion]

#### **“SUBCHAPTER B. DUTIES OF THE EXECUTIVE DIRECTOR**

##### **“Sec. 16.011. General Responsibilities of the Executive Director**

“The executive director shall determine the responsibilities of each administrative division of the department and its staff in carrying out the authority, duties, and functions provided in this code.

##### **“Sec. 16.012. Studies, Investigations, Surveys**

“(a) The executive director shall make studies, investigations, and surveys of the occurrence, quantity, quality, and availability of the surface water and groundwater of this state. For these purposes the staff shall collect, receive, analyze, and process basic data concerning the water resources of the state.

“(b) The executive director shall:

“(1) determine suitable locations for future water facilities, including reservoir sites;

“(2) locate land best suited for irrigation;

“(3) make estimates of the cost of proposed irrigation works and the improvement of reservoir sites;

“(4) examine and survey reservoir sites; and

“(5) investigate the effects of fresh water inflows upon the bays and estuaries of Texas.

“(c) The executive director shall keep full and proper records of his work, observations, data, and calculations, all of which are the property of the state.

“(d) In performing his duties under this section, the executive director shall assist the commission in carrying out the purposes and policies stated in Section 12.014 of this code.

**"Sec. 16.013. Engineering, Hydrologic, and Geologic Functions**

"The executive director shall advise and assist the board and the commission with regard to engineering, hydrologic, and geologic matters concerning the water resources of the state. The executive director shall evaluate, prepare, and publish engineering, hydrologic, and geologic data, information, and reports relating to the water resources of the state.

**"Sec. 16.014. Silt Load of Streams, Etc.**

"The executive director shall determine the silt load of streams, make investigations and studies of the duty of water, and make surveys to determine the water needs of the distinct regional divisions of the watershed areas of the state.

**"Sec. 16.015. Studies of Underground Water Supply**

"The executive director may make studies and investigations of the physical characteristics of water-bearing formations and of the sources, occurrence, quantity, and quality of the underground water supply of the state and may study and investigate feasible methods to conserve, preserve, improve, and supplement this supply. The work shall first be undertaken in areas where, in the judgment of the board, the greatest need exists, and in determining the need, the board shall consider all beneficial uses essential to the general welfare of the state. Water-bearing formations may be explored by coring or other mechanical or electrical means when the area to be investigated has more than a local influence on water resources.

**"Sec. 16.016. Pollution of Red River Tributaries**

"Within the limits of available money and facilities, the executive director shall study salt springs, gypsum beds, and other sources of natural pollution of the tributaries of the Red River and shall study means of eliminating this natural pollution and preventing it from reaching the Red River.

**"Sec. 16.017. Topographic and Geologic Mapping**

"The executive director shall carry out the program for topographic and geologic mapping of the state.

**"Sec. 16.018. Soil Resource Planning**

"The executive director may contract with the State Soil Conservation Board for joint investigation and research in the field of soil resource planning. The State Soil Conservation Board may appoint a representative to advise and work with the executive director.

**"Sec. 16.019. Cooperative Agreements**

"With the approval of the board, the executive director may negotiate and execute contracts with persons or with federal, state, or local agencies for joint or cooperative studies and investigations of the occurrence, quantity, and quality of the surface water and groundwater of the state; the topographical mapping of the state; and the collection, processing, and analysis of other basic data relating to the development of the water resources of the state and for the administration and performance of these contracts.

**"Sec. 16.020. Master Plans of Districts, Etc.**

"The executive director shall review and analyze master plans and other reports of conservation districts, river authorities, and state agencies and shall make its recommendations to the board or the commission in all cases where approval of the board or commission is required by law or is requested by a district, authority, or agency.

**"Sec. 16.021. Centralized Data Bank**

"The executive director shall create a centralized data bank incorporating all hydrological data collected by state agencies.

"[Sections 16.022–16.050 reserved for expansion]

**"SUBCHAPTER C. PLANNING****"Sec. 16.051. State Water Plan**

"(a) The executive director shall prepare, develop, and formulate a comprehensive state water plan.

"(b) The plan shall define and designate river basins and watersheds as separate units for the purpose of water development and interwatershed transfers.

"(c) The executive director shall be governed in his preparation of the plan by a regard for the public interest of the entire state. The executive director shall direct his efforts toward the orderly development and management of water resources in order that sufficient water will be available at a reasonable cost to further the economic development of the entire state.

"(d) The executive director shall also give consideration in the plan to the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and to the effect of the plan on navigation.

**"Sec. 16.052. Interbasin Water Transfer**

"The executive director shall not prepare or formulate a plan which contemplates or results in the removal of surface water from the river basin of origin if the water supply involved will be required for reasonably foreseeable water supply requirements within the river basin of origin during the next ensuing 50-year period, except on a temporary, interim basis.

**"Sec. 16.053. Hearing on Preliminary Plan**

"(a) After the executive director completes his preliminary planning of the water resources development within a river basin, he shall hold a public hearing, after notice, at some central location within the river basin. If the proposed plan involves the transfer of water from one basin to another, the hearing shall be held at some location convenient to the areas affected.

"(b) The executive director shall present the proposed plan of development and hear evidence for and against the plan.

"(c) After the hearing, the executive director shall consider the effect the plan will have on the present and future development, economy, general welfare, and water requirements of the river basin or the areas affected.

**"Sec. 16.054. Hearing on Completed State Water Plan**

"When the executive director has prepared and examined the completed preliminary plan, the board shall hold a public hearing on the plan to determine whether or not it gives adequate consideration to the protection of existing water rights in this state and whether or not it takes into account modes and procedures for the equitable adjustment of water rights affected by the plan. After the hearing, the board may formally adopt the state water plan. A majority vote is necessary for adoption.

**"Sec. 16.055. Effect of Plan**

"(a) The state water plan, as formally adopted by the board, shall be a flexible guide to state policy for the development of water resources in this state.

"(b) The commission shall take the plan into consideration in matters coming before it but is not bound by the plan.

"(c) Nothing in the state water plan or any amendment or modification of the plan affects any vested right existing before August 30, 1965.

**"Sec. 16.056. Amendment of Plan**

"(a) The board shall amend or modify the plan as experience and changed conditions require after holding a public hearing on any amendment or modification in the manner and for the purposes provided by Section 16.054 of this code.

"(b) Any amendment or modification adopted by the board becomes a part of the plan.

**"Sec. 16.057. Federal Assistance in Financing Plan**

"The executive director may take all necessary action to qualify for federal assistance in financing the development and improvement of the plan.

**"Sec. 16.058. Studies of Bays and Estuaries**

"The executive director shall carry out comprehensive studies of the effects of fresh water inflows upon the bays and estuaries of Texas. The studies shall include the development of methods of providing and maintaining the ecological environment thereof suitable to their living marine resources. The studies shall be completed and the results published by December 31, 1979. The General Land Office, the Parks and Wildlife Department, and the Texas Coastal and Marine Council are authorized and directed to assist and cooperate in all possible ways with the department in this undertaking.

"[Sections 16.059–16.090 reserved for expansion]

**"SUBCHAPTER D. COOPERATION WITH FEDERAL GOVERNMENT****"Sec. 16.091. Designation of Department**

"The department is designated as the state agency to cooperate with the Corps of Engineers of the United States Army and the Bureau of Reclamation of the United States Department of the Interior in the planning of water resource development projects in this state.

**"Sec. 16.092. Local Sponsors for Projects**

"(a) When a project is proposed for planning or development by the department, the Corps of Engineers of the United States Army, or the Bureau of Reclamation of the United States Department of the Interior, any political subdivision may apply to the executive director for designation as the cooperating local sponsor of the project.

"(b) In the application the applicant shall:

"(1) describe the purposes of the project;

"(2) state the reasons for the application, the contemplated use of water the applicant might derive from the project if a permit for the use is subsequently granted by the commission; and

"(3) cite the contributions the applicant is prepared to make to the planning or development of the project.

"(c) No application for designation as a local sponsor shall cover more than one proposed project.

"(d) The commission shall prescribe the form to be used in applications for designation as cooperating local sponsor. Before accepting the application, the commission may require that the applicant complete the prescribed form.

"(e) Before making any designation of local sponsorship, the commission shall set the application for hearing and give public notice of the hearing. Any interested party may appear and be heard for or against the designation of the applicant as project sponsor.



“(f) More than one cooperating local sponsor may be designated for each project, but each applicant must comply with the provisions of this section.

“(g) After a public hearing, the commission, by written order, shall grant or reject the application and shall state its reasons. The commission may set a reasonable time period for any sponsorship designation.

“(h) In granting any future permit for use of water stored in a project for which it has designated a local sponsor, the commission shall fully recognize that sponsor’s contributions to the planning and development of the project.

“(i) To the extent that no local cooperator is prepared to undertake local sponsorship of a federal project in whole or part or to the extent that the board has an interest in the project, the board may be designated as sponsor of the project or as an additional cooperating sponsor.

“[Sections 16.093–16.130 reserved for expansion]

#### “SUBCHAPTER E. ACQUISITION AND DEVELOPMENT OF FACILITIES

##### “Sec. 16.131. Authorized Projects

“The board may use the development fund for projects including the design, acquisition, lease, construction, reconstruction, development, or enlargement in whole or part of any existing or proposed project.

##### “Sec. 16.132. Joint Ventures

“The board may act singly or in a joint venture in partnership with any person or entity, including any agency or political subdivision of this state, or with another state or its political subdivisions, or with the United States, or with a foreign nation, to the extent permitted by law.

##### “Sec. 16.133. Permits Required

“The board shall obtain permits from the commission for the storage, transportation, and application to beneficial use of water in reservoirs and associated works constructed by the board.

##### “Sec. 16.134. Storing Water

“The board may use any reservoir acquired, leased, constructed, reconstructed, developed, or enlarged by it under this chapter to store unappropriated state water and other water acquired by the state.

##### “Sec. 16.135. Board Findings

“Before the board may acquire storage facilities in any reservoir, the board shall find affirmatively that:

“(1) it is reasonable to expect that the state will recover its investment in the facilities;

“(2) the cost of the facilities exceeds the current financing capabilities of the area involved, and the facilities cannot be reasonably financed by local interests without state participation;

“(3) the public interest will be served by acquisition of the facilities; and

“(4) the facilities to be constructed or reconstructed contemplate the optimum development of the site which is reasonably reserved under all existing circumstances of the site.

##### “Sec. 16.136. Facilities Wanted by Political Subdivision

“The board shall not acquire any facility to the extent that the board finds that the political subdivision:

“(1) is willing and reasonably able to finance the acquisition of the facility;

“(2) has qualified by obtaining the necessary permit; and

“(3) has proposals that are consistent with the objectives of the state water plan.

**“Sec. 16.137. Contracts: General Authority**

“(a) The board may execute contracts to the full extent that contracts are constitutionally authorized and not limited for the design, management, acquisition, lease, construction, reconstruction, development, enlargement, operation, or maintenance, singularly or in any combination, of any existing or proposed project.

“(b) The board shall obtain the approval of the attorney general as to the legality of all contracts authorized under this subchapter to which the board is a party.

**“Sec. 16.138. Specific Contracts Authorized**

“Contracts authorized by Section 16.137 of this code shall include but are not limited to the following:

“(1) contracts secured by the general credit of the state which shall constitute general obligations of the state in the same manner and with the same effect as water development bonds, and principal and interest on these contracts shall be paid in the manner provided for payment of principal and interest on state bonds by the constitution;

“(2) federal grants or grants from other sources;

“(3) contracts which may be fully or partially secured by water purchase or repayment contracts executed by political subdivisions of the state for purchase of water and facilities necessary to supply present and future regional and local water requirements;

“(4) contracts with any person, including but not limited to the United States, local public agencies, power cooperatives, and investor-owned utilities, for financing, constructing, and operating facilities to operate and deliver pumping energy required for projects; and

“(5) contracts for goods and services necessary for the design, management, acquisition, lease, construction, reconstruction, development, enlargement, implementation, operation, or maintenance of any existing or proposed project or portion of the project.

**“Sec. 16.139. Contracts: Facilities Acquired for a Term of Years**

“If facilities are acquired for a term of years, the board may include in the contract provisions for renewal that will protect the state’s investment.

**“Sec. 16.140. Maintenance Contracts**

“The board may execute contracts for the operation and maintenance of the state’s interest in any project and may agree to pay reasonable operation and maintenance charges allocable to the state interest.

**“Sec. 16.141. Recreational Facilities**

“The board may execute contracts with the United States and with state agencies and political subdivisions and with others to the extent authorized for the development and operation of recreational facilities at any project in which the state has acquired an interest. Income received by the board under these contracts may be used for the same purposes as income from the sale of water. The legislature may appropriate money for the development and operation of recreational facilities at projects in which the state has acquired an interest.

“[Sections 16.142–16.180 reserved for expansion]

**"SUBCHAPTER F. SALE OR LEASE OF FACILITIES****"Sec. 16.181. Board May Sell or Lease Projects**

"(a) The board may sell, transfer, or lease, to the extent of its ownership, a project acquired, constructed, reconstructed, developed, or enlarged with money from the water development account.

"(b) The board shall obtain the approval of the attorney general as to the legality of all contracts authorized under this subchapter to which the board is a party.

**"Sec. 16.182. Permit Required**

"Before the board grants the application to buy, receive, or lease the facilities, the applicant shall first secure a permit for water use from the commission. If the facilities are to be leased, the permit may be for a term of years.

**"Sec. 16.183. Permit: Paramount Consideration of Commission**

"In passing on an application for a permit under this subchapter whether it proposes a use of water inside or outside the watershed of the impoundment, the commission shall give paramount consideration to recouping the state's investment in order to protect the public interest and promote the general welfare.

**"Sec. 16.184. Contract Must be Negotiated**

"The commission shall not issue the permit until the applicant has executed a contract with the board for acquisition of the facilities.

**"Sec. 16.185. Reservoir Land**

"The board may lease acquired reservoir land until construction of the dam is completed without the necessity of a permit issued by the commission.

**"Sec. 16.186. Price of Sale**

"The price of the sale or transfer of a state facility, other than a facility acquired under a contract, shall be the sum of the direct cost of acquisition, plus an interest charge computed at a rate of one-half of one percent a year from the date of purchase or acquisition by the board to the date of sale, plus interest annually at the cumulative average effective rate on all water development bonds sold up to the date of the sale, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of sale or transfer, less any payments received by the board from the lease of the facility or the sale of water from it.

**"Sec. 16.187. Price of Sale: Facilities Acquired Under Contracts**

"(a) The price of the sale or transfer of a facility acquired under a contract shall be the sum of the direct cost of acquisition, plus an interest charge computed at a rate of one-half of one percent per year from the date of acquisition of the facility to the date of sale or transfer, plus interest at the cumulative average effective rate on all water development bonds sold up to the date of the sale or transfer for each year or portion of a year for which the board paid interest to the other party to the contract, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of the sale or transfer, less any payments received by the board from the lease of the facility or the sale of water from it.

"(b) If, in transferring any contract, the board remains in any way directly, conditionally, or contingently liable for the performance of any part of the contract, then the transferee, in addition to the payments prescribed by Subsection (a) of this section, shall pay to the board annually

one-half of one percent of the remaining amount owed to the other party to the contract and shall continue these payments until the board is fully released from the contract.

**"Sec. 16.188. Costs Defined**

"With reference to the sale of a state facility, 'direct cost of acquisition' means the principal amount the board has paid or agreed to pay on the facility up to the date of the sale.

**"Sec. 16.189. Lease Payments**

"In leasing a state facility for a term of years, the board shall require annual payments not less than the total of:

"(1) the annual principal and interest requirements applicable to the debt incurred by the state in acquiring the facility; and

"(2) the state's annual cost for operation, maintenance, and rehabilitation of the facility.

**"Sec. 16.190. Sale or Lease: Condition Precedent**

"(a) No sale, transfer, or lease of a state facility is valid unless the board first makes the following affirmative findings:

"(1) that the applicant has a permit granted by the commission;

"(2) that the sale, transfer, or lease will contribute to the conservation and development of the water resources of the state; and

"(3) that the consideration for the sale, transfer, or lease is fair, just, and reasonable and in full compliance with the law.

"(b) The consideration for any such sale or transfer may be either money or revenue bonds, which revenue bonds for the purposes hereof shall be deemed the same as money.

"(c) The amount of money shall be equal to the price for purchasing the facilities as prescribed by the provisions of Section 16.187 of this code, or if revenue bonds constitute the consideration, the principal amount of revenue bonds shall be equal to the price for purchasing the facilities as prescribed by the provisions of Section 16.187 of this code, and such revenue bonds shall bear interest at the rate prescribed in Section 17.128 of this code with regard to bonds purchased with the proceeds of the Texas Water Development Fund.

**"Sec. 16.191. Disposition of Proceeds**

"(a) The money received from any sale, transfer, or lease of facilities as cash, or in the case of a sale or transfer involving revenue bonds, the money received as matured interest or principal on the bonds shall be used to pay the principal of and interest on water development bonds or to meet contractual obligations incurred by the board. The money shall be collected and credited to the proper special fund as is money received in payment of principal and interest on loans to political subdivisions under this code, taking into consideration the manner in which the facilities were acquired.

"(b) When enough money has been collected to pay all outstanding indebtedness, including the principal of all state bonds and contractual obligations and the full amount of interest to accrue on these debts, the board may use any further amounts received from the sale, transfer, or lease of facilities to acquire additional facilities or to provide assistance to political subdivisions for water supply projects.

**"Sec. 16.192. Sale of Stored Water**

The board may sell any unappropriated public water of the state and other water acquired by the state that is stored by or for it. The price will be determined by the board.

**"Sec. 16.193. Permit**

"(a) The board may not sell the water stored in a facility to any person who has not obtained a permit from the commission. The rights of the applicant in the water are governed by the terms and conditions of the permit. The permit may be for a term of years.

"(b) Whether the application for a permit involves a proposed use of water inside or outside the watershed of the impoundment, the commission shall give paramount consideration to recouping the state's investment in order to protect the public interest and promote the general welfare.

"(c) The permit shall be conditioned on continued payment of the obligations assumed under the contract with the board and may provide for cancellation at any time on breach of the contract.

**"Sec. 16.194. Sale Contract: Provisions, Limitations**

"(a) The board may determine the consideration and other provisions to be included in water sale contracts, but the consideration and other provisions shall be fair, reasonable, and nondiscriminatory. The board may include charges for standby service, which means holding water and conservation storage space for use and for actual delivery of water.

"(b) The board shall make the same determinations with respect to the sale of water as are required in Section 16.190 of this code with respect to the sale or lease of facilities.

"(c) The board shall not compete with any political subdivision in the sale of water when this competition jeopardizes the ability of the political subdivision to meet obligations incurred to finance its own water supply projects.

**"Sec. 16.195. Emergency Releases of Water**

"Unappropriated water and other water of the state stored in any facility acquired by and under the control of the board may be released without charge to relieve any emergency condition arising from drought, severe water shortage, or public calamity, if the commission first determines the existence of the emergency and requests the board to release water.

**"Sec. 16.196. Preferences**

"The board shall give political subdivisions a preferential right, but not an exclusive right, to purchase, acquire, or lease facilities and to purchase water from facilities. Preferences shall be given in these respects in accord with the provisions of Section 11.123 of this code relating to preferences in the appropriation and use of state water. The board and the commission shall coordinate their efforts to meet these objectives and to assure that the public water of this state, which is held in trust for the use and benefit of the public, will be conserved, developed, and utilized in the greatest practicable measure for the public welfare.

**"Sec. 16.197. Lease of Land Prior to Project Construction**

"The board may lease tracts of land acquired for project purposes for a term of years for any purpose not inconsistent with ultimate project construction. The lease shall be scheduled to expire before initiation of project construction.

**"Sec. 16.198. Lease Contributions Equivalent to Taxes**

The lease may provide for contribution by the lessee to units of local government of amounts equivalent to ad valorem taxes or special assessments.

"[Sections 16.199–16.230 reserved for expansion]

**"SUBCHAPTER G. IMPROVEMENTS****"Sec. 16.231. Purpose of Subchapter**

"The chief purpose of this subchapter is to provide for planning and marking out upon the ground all improvements necessary to reclaim for agricultural use all overflowed land, swampland, and other land in this state that is not suitable for agricultural use because of temporary or permanent excessive accumulation of water on or contiguous to the land.

**"Sec. 16.232. Surveys; Planning**

"The executive director shall have the staff perform all preliminary work required in the process of planning or marking out upon the ground the most practical, permanent, economical, and equitable improvements or systems of improvements, including levees, dikes, dams, canals, drains, waterways, reservoirs, and other improvements incidental to them. This work includes investigations, estimates, surveys, maps, reports, and publications, and any other work which is incidental to this.

**"Sec. 16.233. Design of Improvements or System of Improvements**

"Insofar as possible, the improvements shall be designed with primary consideration to the topographic and hydrographic conditions and in such a manner that each division of a project shall be a complete, united project forming a coordinate part of an ultimately finished series of projects so constituted that the successful operation of each united project shall coordinate with the successful operation of other projects within the same hydraulic influence.

**"Sec. 16.234. Location of Projects: Reports**

"The executive director may determine the location of the improvements or systems of improvements and the time and manner of making the results public. The department shall make records or publish reports describing the improvements or systems of improvements and shall file in its office all final results that are of value to the state.

**"Sec. 16.235. Cooperation With Other Agencies**

"In performing his functions, the executive director may confer with federal and state agencies and with political subdivisions and, with the approval of the board, may execute cooperative agreements with them. The executive director may cancel any such agreement on 10 days notice to the other party.

**"Sec. 16.236. Advice to Districts**

"The executive director shall confer with districts requesting technical advice on the adequate execution of proposed levee and drainage improvements.

**"Sec. 16.237. Districts to File Information With Department**

"Immediately before having its bonds approved by the attorney general, each drainage district and levee improvement district shall file with the department, on forms furnished by the department, a complete record showing each step in the organization of the district, the amount of bonds to be issued, and a description of the area and boundaries of the district, accompanied by plans, maps, and profiles of improvements and the district engineer's estimates and reports on them.

**"Sec. 16.238. Construction of Levee Without Approval of Plans**

"(a) No person, corporation, or levee improvement district may construct, attempt to construct, cause to be constructed, maintain, or cause to be maintained any levee or other such improvement on, along, or near any stream of this state that is subject to floods, freshets, or overflows

so as to control, regulate, or otherwise change the floodwater of the stream without first obtaining approval of the plans by the commission.

"(b) Any person, corporation, or levee improvement district who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$100.

"(c) At the request of the executive director, the attorney general shall file suit in a district court of Travis County to enjoin any violation or threatened violation of this section.

"(d) This section does not apply to dams permitted by the commission.

"[Sections 16.239–16.270 reserved for expansion]

#### "SUBCHAPTER H. NAVIGATION FACILITIES

##### "Sec. 16.271. Improvement of Streams and Canals and Construction of Facilities Within Cypress Creek Drainage Basin

"The board may improve streams and canals and construct all waterways and other facilities necessary to provide for navigation within the Cypress Creek drainage basin which is located in the northeast portion of the state.

##### "Sec. 16.272. Long-Term Contracts With the United States

"The board may execute long-term contracts with the United States or any of its agencies for the acquisition and development of improvements and facilities under Section 16.271 of this code.

##### "Sec. 16.273. Temporary Authority to Act for District

"The board may act in behalf of a local district or districts until they can take over the project or projects in accordance with the board's agreement with the district or districts in acting as the sponsor.

"[Sections 16.274–16.310 reserved for expansion]

#### "SUBCHAPTER I. FLOOD INSURANCE

##### "Sec. 16.311. Short Title

"This subchapter may be cited as the Flood Control and Insurance Act.

##### "Sec. 16.312. Purpose

"The State of Texas recognizes the personal hardships and economic distress caused by flood disasters since it has become uneconomic for the private insurance industry alone to make flood insurance available to those in need of such protection on reasonable terms and conditions. Recognizing the burden of the nation's resources, congress enacted the National Flood Insurance Act of 1968, as amended (42 U.S.C. Sections 4001 through 4127), whereby flood insurance can be made available through coordinated efforts of the federal government and the private insurance industry, by pooling risks, and the positive cooperation of state and local government. The purpose of this subchapter is to evidence a positive interest in securing flood insurance coverage under this federal program and to so procure for those citizens of Texas desiring to participate and in promoting the public interest by providing appropriate protection against the perils of flood losses and in encouraging sound land use by minimizing exposure of property to flood losses.

##### "Sec. 16.313. Definitions

"In this subchapter:

"(1) 'Political subdivision' means any political subdivision or body politic and corporate of the State of Texas and includes any

county, river authority, conservation and reclamation district, water control and improvement district, water improvement district, water control and preservation district, fresh water supply district, irrigation district, and any type of district heretofore or hereafter created or organized or authorized to be created or organized pursuant to the provisions of Article XVI, Section 59 or Article III, Section 52 of the Constitution of the State of Texas; 'political subdivision' also means any interstate compact commission to which the State of Texas is a party, municipal corporation, or city whether operating under the Home Rule Amendment of the Constitution or under the General Law.

"(2) 'National Flood Insurance Act' means the National Flood Insurance Act of 1968, as amended (42 U.S.C. Sections 4001 through 4127), and the implementation and administration of the Act by the Secretary of the United States Department of Housing and Urban Development.

"(3) 'Secretary' means the Secretary of the United States Department of Housing and Urban Development.

**"Sec. 16.314. Cooperation of Texas Department of Water Resources**

"In recognition of the necessity for a coordinated effort at all levels of government, the department shall cooperate with the Federal Insurance Administrator of the United States Department of Housing and Urban Development in the planning and carrying out of state participation in the National Flood Insurance Program; however, the responsibility for qualifying for the National Flood Insurance Program shall belong to any interested political subdivision, whether presently in existence or created in the future.

**"Sec. 16.315. Political Subdivisions; Compliance With Federal Requirements**

"All political subdivisions are hereby authorized to take all necessary and reasonable actions to comply with the requirements and criteria of the National Flood Insurance Program, including but not limited to:

"(1) making appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses;

"(2) guiding the development of proposed future construction, where practicable, away from location which is threatened by flood hazards;

"(3) assisting in minimizing damage caused by floods;

"(4) authorizing and engaging in continuing studies of flood hazards in order to facilitate a constant reappraisal of the flood insurance program and its effect on land use requirements;

"(5) engaging in floodplain management and adopting enforcing permanent land use and control measures consistent with the criteria established under the National Flood Insurance Act;

"(6) declaring property, when such is the case, to be in violation of local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas and notifying the secretary, or whomever he designates, of such property;

"(7) consulting with, giving information to, and entering into agreements with the Department of Housing and Urban Development for the purpose of:

"(A) identifying and publishing information with respect to all flood areas, including coastal areas; and



"(B) establishing flood-risk zones in all such areas and making estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas;

"(8) cooperating with the secretary's studies and investigations with respect to the adequacy of local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

"(9) taking steps to improve the long-range management and use of flood-prone areas;

"(10) purchasing, leasing, and receiving property from the secretary when such property is owned by the federal government and lies within the boundaries of the political subdivision pursuant to agreements with the Department of Housing and Urban Development or other appropriate legal representative of the United States Government;

"(11) requesting aid pursuant to the entire authorization from the board;

"(12) satisfying criteria adopted and promulgated by the department pursuant to the National Flood Insurance Program; and

"(13) adopting permanent land use and control measures with enforcement provisions which are consistent with the criteria for land management and use adopted by the secretary.

**"Sec. 16.316. Coordination of Local, State, and Federal Programs by Department**

"(a) The department shall aid, advise, and coordinate the efforts of present and future political subdivisions endeavoring to qualify for participation in the National Flood Insurance Program.

"(b) Pursuant to the National Flood Insurance Program and state and local efforts complementing the program, the department shall aid, advise, and cooperate with political subdivisions, the State Board of Insurance, and the United States Department of Housing and Urban Development when aid, advice, and cooperation are requested or deemed advisable by the board.

"(c) The aforementioned aid may include but is not necessarily limited to:

"(1) coordinating local, state, and federal programs relating to floods, flood losses, and floodplain management;

"(2) evaluating the present structure of all federal, state, and political subdivision flood control programs within or adjacent to the state, including an assessment of the extent to which public and private floodplain management activities have been instituted;

"(3) carrying out studies with respect to the adequacy of present public and private measures, laws, regulations, and ordinances in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

"(4) evaluating all available engineering, hydrologic, and geologic data relevant to flood-prone areas and flood control in those areas; and

"(5) carrying out floodplain studies and mapping programs of floodplains, flood-prone areas, and flood-risk zones.

"(d) On the basis of such studies and evaluations, the department, to the extent of its capabilities, shall periodically identify and publish information and maps with respect to all floodplain areas, including the state's coastal area, which have flood hazards, and where possible aid the

federal government in identifying and establishing flood-risk zones in all such areas.

**"Sec. 16.317. Cooperation of State Board of Insurance**

"Pursuant to the National Flood Insurance Program, the State Board of Insurance shall aid, advise, and cooperate with political subdivisions, the department, and the United States Department of Housing and Urban Development when such aid, advice, and cooperation are requested or deemed advisable by the State Board of Insurance.

**"Sec. 16.318. Rules**

"Political subdivisions which qualify for the National Flood Insurance Program, the State Board of Insurance, and the board may adopt and promulgate reasonable rules which are necessary for the orderly effectuation of the respective authorizations herein.

**"Sec. 16.319. Time Limitation**

"Political subdivisions wishing to qualify under the National Flood Insurance Program shall have the authority and endeavor to do so by June 30, 1970, by complying with the directions of the Department of Housing and Urban Development and by:

"(1) evidencing to the secretary a positive interest in securing flood insurance coverage under the National Flood Insurance Program; and

"(2) giving to the secretary satisfactory assurance that by June 30, 1970, permanent land use and control measures will have been adopted for the political subdivision which measures will be consistent with the comprehensive criteria for land management and use developed by the Department of Housing and Urban Development, and that the application and enforcement of such measures will commence as soon as technical information on floodways and on controlling elevations is available.

**"CHAPTER 17. PUBLIC FUNDING**

**"SUBCHAPTER A. GENERAL PROVISIONS**

**"Section 17.001. Definitions**

"In this chapter:

"(1) 'Board' means the Texas Water Development Board.

"(2) 'Commission' means the Texas Water Commission.

"(3) 'Executive director' means the executive director of the Texas Department of Water Resources.

"(4) 'Department' means Texas Department of Water Resources.

"(5) 'Political subdivision' means a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party.

"(6) 'Project' means any engineering undertaking or work to conserve and develop surface or subsurface water resources of the state, including the control, storage, and preservation of its storm water and floodwater and the water of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including underground storage projects, filtration and water treatment plants, including any system necessary to transport water from storage to points of distribution or from storage to filtration and treatment plants, including facilities for transporting

water therefrom to wholesale purchasers by the acquisition, by purchase of rights in underground water, by the drilling of wells, or for any one or more of these purposes or methods.

“(7) ‘Weighted average effective interest rate’ means the rate of interest computed by dividing the total value of all coupons attached to the pertinent bonds issued under this chapter, after deducting all premiums and adding all discounts involved, by the total number of years from the date of issuance to the date of maturity of each bond previously issued.

“(8) ‘Bonds’ means all Texas Water Development Bonds now or hereafter authorized by the Texas Constitution.

“(9) ‘Waste’ has the same meaning as provided in Section 26.001 of this code.

“(10) ‘Water development bonds’ means the Texas Water Development Bonds authorized by Section 49-c, as amended, and Section 49-d, as amended, of Article III of the Texas Constitution.

“(11) ‘Water quality enhancement bonds’ means the Texas Water Development Bonds authorized by Section 49-d-1, as amended, of Article III of the Texas Constitution.

“[Sections 17.002–17.010 reserved for expansion]

## **“SUBCHAPTER B. WATER DEVELOPMENT BONDS**

### **“Sec. 17.011. Issuance of Water Development Bonds**

“The board, by resolution, from time to time may provide for the issuance of negotiable bonds in an aggregate amount not to exceed \$400 million pursuant to the provisions of Article III, Section 49-c and Section 49-d, as amended, of the Texas Constitution, and the issuance of additional negotiable bonds in an aggregate amount not to exceed \$200 million pursuant to the provisions of Article III, Section 49-d-1, as amended, of the Texas Constitution.

### **“Sec. 17.012. Description of Bonds**

“The bonds shall be on a parity and shall be called Texas Water Development Bonds. The board may issue them in one or several installments and shall date the bonds of each issue.

### **“Sec. 17.013. Sale Price of Bonds**

“The board may not sell an installment or series of bonds for an amount less than the face value of all of the bonds comprising the installment or series with accrued interest from their date of issuance.

### **“Sec. 17.014. Interest on Bonds**

“The bonds of each issue shall bear interest payable annually or semi-annually at the option of the board.

### **“Sec. 17.015. Form, Denomination, Place of Payment**

“The board shall:

- “(1) determine the form of the bonds, including the form of any interest coupons to be attached;
- “(2) fix the denomination of the bonds; and
- “(3) fix the places of payment of the principal and interest.

### **“Sec. 17.016. Maturity of Bonds**

“The bonds of each issue shall mature, serially or otherwise, not more than 50 years from their date of issuance.

**"Sec. 17.017. Redemption Before Maturity**

"In the resolution providing for the issuance of bonds, the board may fix the price, terms, and conditions for redemption of bonds before maturity.

**"Sec. 17.018. Registered and Bearer Bonds**

"The resolution may provide for registration of the bonds as to ownership, successive conversion and reconversion from registered to bearer bonds, and successive conversion and reconversion from bearer to registered bonds.

**"Sec. 17.019. Notice of Bond Sale**

"After the board decides to call for bids for the sale of bonds, the board shall publish an appropriate notice of the sale at least one time in one or more recognized financial publications of general circulation published within the state and one or more recognized financial publications published outside the state.

**"Sec. 17.020. Competitive Bids**

"The board shall sell the bonds only after competitive bidding to the highest and best bidder. The board may reject any or all bids.

**"Sec. 17.021. Security for Bids**

"The board shall require every bidder, except administrators of state funds, to include with the bid an exchange or cashier's check for a sum the board considers adequate as a forfeit guaranteeing acceptance of and payment for all bonds covered by the bids and accepted by the board.

**"Sec. 17.022. Approval of Bonds; Registration**

"Before bonds are delivered to the purchasers, the bonds and the record pertaining to their issuance shall be submitted to the attorney general for his approval. When the attorney general's approval is obtained, the bonds shall be registered in the office of the state comptroller.

**"Sec. 17.023. Execution of Bonds**

"The bonds shall be executed on behalf of the board as general obligations of the state in the following manner: the chairman of the board and the development fund manager shall sign the bonds; the board shall impress its seal on the bonds; the governor shall sign the bonds; and the Secretary of State shall attest the bonds and impress on them the state seal.

**"Sec. 17.024. Facsimile Signatures and Seals**

"The resolution authorizing the issuance of an installment or series of bonds may prescribe the extent to which the board in executing the bonds and appurtenant coupons may use facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals. Interest coupons may be signed by the facsimile signatures of the chairman of the board and the development fund manager.

**"Sec. 17.025. Signature of Former Officer**

"If an officer whose manual or facsimile signature appears on a bond or whose facsimile signature appears on any coupon ceases to be an officer before the bond is delivered, the signature is valid and sufficient for all purposes as if he had remained in office until the delivery had been made.

**"Sec. 17.026. Bonds Incontestable**

"After approval by the attorney general, registration by the comptroller, and delivery to the purchasers, the bonds are incontestable and constitute general obligations of the state.

**"Sec. 17.027. Payment by Treasurer**

"The State Treasurer shall pay the principal of the bonds as they mature and the interest as it becomes payable.

**"Sec. 17.028. Payment Enforceable by Mandamus**

"Payment of the bonds and performance of official duties prescribed by Article III, Section 49-c, Section 49-d, as amended, and Section 49-d-1, as amended, of the Texas Constitution and by the provisions of this subchapter may be enforced in any court of competent jurisdiction by mandamus or other appropriate proceeding.

**"Sec. 17.029. Refunding Bonds**

"The board may provide by resolution for the issuance of refunding bonds to refund outstanding bonds issued under this chapter and their accrued interest. The board may sell these bonds and use the proceeds to retire the outstanding bonds issued under this chapter, or the board may exchange the refunding bonds for the outstanding bonds. The issuance of the refunding bonds, their maturity, the rights of the bondholders, and the duties of the board with respect to refunding bonds are governed by the provisions of this chapter relating to original bonds to the extent that they may be made applicable.

**"Sec. 17.030. Bonds Negotiable Instruments**

"The bonds issued under the provisions of this chapter are negotiable instruments under the laws of this state.

**"Sec. 17.031. Bonds Not Taxable**

"Bonds issued under this chapter, the income from the bonds, and the profit made on their sale are free from taxation within the state.

**"Sec. 17.032. Authorized Investments**

"Bonds issued under this chapter are legal and authorized investments for:

- "(1) banks;
- "(2) savings banks;
- "(3) trust companies;
- "(4) building and loan associations;
- "(5) insurance companies;
- "(6) fiduciaries;
- "(7) trustees;
- "(8) guardians; and
- "(9) sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

**"Sec. 17.033. Security for Deposit of Funds**

"Bonds issued under this chapter when accompanied by all appurtenant unmatured coupons are lawful and sufficient security for all deposits of funds of the state or of a city, town, village, county, school district, or any other agency or political subdivision of the state at the par value of the bonds.

**"Sec. 17.034. Mutilated, Lost, Destroyed Bonds**

"The board may provide for the replacement of any mutilated, lost, or destroyed bond.

"[Sections 17.035–17.070 reserved for expansion]

**"SUBCHAPTER C. FUNDING PROVISIONS****"Sec. 17.071. Disposition of Money Received**

"All money received by the board shall be deposited in the State Treasury and credited to the proper special fund as provided in this subchapter.

**"Sec. 17.072. Development Fund**

"(a) The Texas Water Development Fund, referred to as the 'development fund,' is a special revolving fund in the State Treasury.

"(b) All proceeds from the sale of water development bonds (except accrued interest) shall be deposited in a special account in the development fund designated 'water development account,' and other money for deposit therein as provided in this chapter shall be credited to the water development account.

"(c) The water development account may be used for any project and in any manner consistent with the provisions of the constitution, but the development fund may not be used for retail distribution or for transportation of water solely to retail purchasers.

"(d) All proceeds from the sale of water quality enhancement bonds (except accrued interest) shall be deposited in a special account in the development fund designated 'water quality enhancement account,' and other money for deposit therein as provided in this chapter shall be credited to the water quality enhancement account.

"(e) The water quality enhancement account may be used for construction of treatment works in any manner consistent with the provisions of the constitution and this code.

**"Sec. 17.073. Water Development Clearance Fund**

"The Texas Water Development Clearance Fund, referred to as the 'clearance fund,' is a special fund in the State Treasury. Transfers shall be made from this fund as provided by this subchapter.

**"Sec. 17.074. Interest and Sinking Fund**

"The Texas Water Development Bonds Interest and Sinking Fund, referred to as the 'interest and sinking fund,' is a special fund in the State Treasury into which there shall be paid, from sources specified in this chapter, amounts sufficient to:

"(1) pay the interest coming due on all outstanding bonds during the ensuing fiscal year;

"(2) pay the principal on all bonds that mature during the ensuing fiscal year, plus collection charges and exchanges on the bonds; and

"(3) establish a reserve equal to the average annual principal and interest requirements on all outstanding bonds.

**"Sec. 17.075. Administrative Fund**

"The Texas Water Development Board Administrative Fund, referred to as the 'administrative fund,' is a special fund in the State Treasury. From sources specified in this chapter, money shall be credited to this fund in amounts sufficient to pay the administrative expenses of the board as authorized by legislative appropriation.

**"Sec. 17.076. Combined Facilities Operation and Maintenance Fund**

"(a) The Combined Facilities Operation and Maintenance Fund is a special fund in the State Treasury.

"(b) Money received from the sale of water, standby service, and the lease of land needed for operation and maintenance of facilities shall be credited to this fund. Any of the money which is not needed for operation and maintenance of facilities may be credited to the interest and sinking fund or used to meet contractual obligations incurred by the board in acquiring facilities.

**"Sec. 17.077. Credits to Clearance Fund**

"Except for proceeds from the sale of bonds and proceeds from the sale of bonds of political subdivisions as provided by Sections 17.134 and 17.180 of this code, all money received by the board in any fiscal year, in-

cluding all amounts received as repayment of loans to political subdivisions and interest on those loans, shall be credited to the clearance fund. Money in the clearance fund may be transferred at any time to the interest and sinking fund until the reserve in that fund is equal to the average annual principal and interest requirements on all outstanding bonds.

**"Sec. 17.078. Transfers at End of Fiscal Year**

"Not later than 15 days after the end of each fiscal year, any money credited to the clearance fund at the end of the fiscal year shall be transferred to the other special funds as prescribed by Sections 17.079 through 17.082 of this code.

**"Sec. 17.079. Transfers to Interest and Sinking Fund**

"(a) The board shall determine:

"(1) the amount of interest coming due on all bonds outstanding;

"(2) the amount of principal of bonds maturing and becoming payable during the fiscal year; and

"(3) the average annual principal and interest requirements on all outstanding bonds.

"(b) The comptroller shall transfer to the interest and sinking fund, after taking into account any money and securities on deposit in the interest and sinking fund, an amount necessary to pay:

"(1) all principal and interest maturing on the bonds during the fiscal year;

"(2) all collection charges and exchanges on the bonds; and

"(3) the money sufficient to establish and maintain an additional reserve equal to the average annual principal and interest requirements on all outstanding bonds.

**"Sec. 17.080. Additional Funds for Payment of Bonds**

"If the amount transferred from the clearance fund plus the money and securities in the interest and sinking fund are insufficient to pay the interest coming due and the principal maturing on the bonds during the fiscal year, then after the transfer to the interest and sinking fund of as much money as is available in the clearance fund, the State Treasurer shall transfer out of the first money coming into the treasury, not otherwise appropriated by the constitution, the amount required to pay principal and interest on the bonds during the fiscal year.

**"Sec. 17.081. Transfers to Administrative Fund**

"If money remains in the clearance fund after making the transfers provided in Section 17.079 of this code, then to the extent possible the comptroller shall transfer to the administrative fund an amount sufficient to cover the legislative appropriation for administrative expenses of the board for the fiscal year.

**"Sec. 17.082. Transfers to Development Fund**

"If money remains in the clearance fund after making the transfers provided in Sections 17.079 and 17.081 of this code, the comptroller shall transfer the balance to the appropriate account in the development fund at the end of each fiscal year to be used for any purpose for which proceeds of bonds in such account may be used.

**"Sec. 17.083. Investment of Reserve Money**

"The board may invest any money credited to the reserve portion of the interest and sinking fund in:

"(1) direct obligations of the United States;

"(2) other obligations unconditionally guaranteed by the United States;

"(3) bonds of the State of Texas; and

"(4) bonds of counties, cities, and other political subdivisions of the state, except bonds issued by a political subdivision to finance a project or treatment works described in this chapter.

**"Sec. 17.084. Limitation on Board Investment**

"The board is bound to the extent that the resolution authorizing the issuance of the bonds further restricts the investment of money in bonds of the United States.

**"Sec. 17.085. Interest and Sinking Fund Investments**

"The board may invest the money in the interest and sinking fund, except the money in the reserve portion of the fund, only in direct obligations of the United States or obligations unconditionally guaranteed by the United States that are scheduled to mature prior to the date the board must have money available for its intended purpose.

**"Sec. 17.086. Development Fund Investments**

"Surplus money in the development fund that is not needed for at least 90 days shall be invested in direct obligations of the United States or in other obligations unconditionally guaranteed by the United States maturing on or before the contemplated date on which the money will be needed.

**"Sec. 17.087. Sale of Securities**

"All of the bonds and obligations owned in the interest and sinking fund or in the development fund are defined as securities. The board may sell securities owned in the interest and sinking fund or in any account in the development fund at the governing market price.

**"Sec. 17.088. Transfers to be Made by Comptroller**

"The comptroller shall make the transfers required by this subchapter.

"[Sections 17.089–17.120 reserved for expansion]

**"SUBCHAPTER D. ASSISTANCE TO POLITICAL SUBDIVISIONS  
FOR PROJECTS**

**"Sec. 17.121. Financial Assistance**

"The water development account may be used by the board to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of projects, but to the extent that financial assistance is given by the board to an applicant for construction, acquisition, or improvement of any waste water treatment plant, the financial assistance shall be considered as state matching funds for obtaining maximum federal grants for construction of treatment works.

**"Sec. 17.122. Application for Assistance**

"(a) In an application to the board for financial assistance, the applicant shall include:

"(1) the name of the political subdivision and its principal officers;

"(2) a citation of the law under which the political subdivision operates and was created;

"(3) the total cost of the project;

"(4) the amount of state financial assistance requested;

"(5) the plan for repaying the total cost of the project; and

"(6) any other information the board requires in order to perform its duties and to protect the public interest.

"(b) The board may not accept an application for financial assistance unless it is submitted in affidavit form by the officials of the political subdivision. The board shall prescribe the affidavit form in its rules.



The rules do not restrict or prohibit the board from requiring additional factual material from an applicant.

**"Sec. 17.123. Certificate of Commission or Approval by Commission**

"(a) Except as provided in Subsection (b) of this section, the board shall not deliver funds pursuant to an application for financial assistance until the political subdivision has furnished the board a resolution adopted by the commission certifying:

"(1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water which the project will provide; or

"(2) that an applicant proposing underground water development has the right to use water that the project will provide.

"(b) If an application includes a proposal for a waste water treatment plant, the part of the application relating to the waste water treatment plant does not need to be certified by the commission, but the board may not deliver funds for the waste water treatment plant until the political subdivision has obtained written evidence of approval of the plans for the waste water treatment plant from the executive director.

**"Sec. 17.124. Considerations in Passing on Application**

"In passing on an application from a political subdivision for financial assistance, the board shall consider:

"(1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits of those projects to the other areas;

"(2) the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the project, including interest;

"(3) whether the political subdivision can reasonably finance the project without assistance from the state;

"(4) the relationship of the project to the overall, statewide water needs; and

"(5) the relationship of the project to the state water plan.

**"Sec. 17.125. Approval of Application**

"The board by resolution may approve an application if, after considering the factors listed in Section 17.124 of this code and any other relevant factors, the board finds:

"(1) that the public interest requires state participation in the project;

"(2) that the political subdivision cannot reasonably finance the project without state assistance in the amount finally approved by the board; and

"(3) that in its opinion the revenue or taxes pledged by the political subdivision will be sufficient to meet all the obligations assumed by the political subdivision during the succeeding period of not more than 50 years.

**"Sec. 17.126. Method of Financial Assistance**

"The board may provide financial assistance by using money in the water development account to purchase bonds or other securities issued by the political subdivision to finance the project. The board may purchase bonds or securities that are secondary or subordinate to other bonds or securities issued by the political subdivision to finance the same project. The board may purchase outstanding prior lien bonds previously issued by the political subdivision when this will avoid or reduce the ne-

cessity for issuing junior lien bonds for subsequent sale to the board. However, the security for both prior lien and junior lien bonds shall be pledged from substantially the same sources of revenue.

**"Sec. 17.127. Bond Maturity**

"The board may not purchase bonds or other securities which have a maturity date more than 50 years from the date of issuance.

**"Sec. 17.128. Interest Rate**

"(a) Except as provided in Subsection (b) of this section, bonds and securities purchased by the board with money in the water development account shall bear the weighted average effective interest rate on all water development bonds previously sold, plus one-half of one percent. The bonds shall bear coupons evidencing interest at a rate or combination of rates that will approximate the effective rate as nearly as the board deems practicable. The effective rate shall be determined by the payment of premiums or the deduction of discounts as necessary.

"(b) Outstanding prior lien bonds purchased by the board under Section 17.126 of this code need not bear the interest rate provided in Subsection (a) of this section, but the board may pay such price or prices for outstanding prior lien bonds which in its discretion will accomplish the objective of Section 17.126 of this code.

**"Sec. 17.129. Approval and Registration**

"The board shall not purchase any bonds or securities that have not been approved by the attorney general and registered by the comptroller.

**"Sec. 17.130. Bonds Incontestable**

"The bonds or other securities issued by a political subdivision are valid, binding, and incontestable after:

- "(1) approval by the attorney general;
- "(2) registration by the comptroller; and
- "(3) purchase by and delivery to the board.

**"Sec. 17.131. Security for Bonds**

"(a) Bonds purchased by the board shall be supported by:

- "(1) all or part of the net revenue from the operation of the project;
- "(2) taxes levied by the political subdivision for the purpose; or
- "(3) a combination of taxes and net revenue, and revenue from other available sources.

"(b) The board may require that the bonds be supported both by taxes and by net revenue from the operation of the project in any ratio the board considers necessary to fully secure the investment. The board shall establish other conditions and requirements it considers to be consistent with sound investment practices and in the public interest.

"(c) As used in this section, 'net revenue' means gross revenue less the amount necessary to provide for principal, interest, and reserve requirements of bonds superior to those purchased by the board and the amount necessary to pay the cost of maintaining and operating the project.

**"Sec. 17.132. Default**

"(a) In the event of a default in payment of the principal or interest on bonds purchased by the board or any other default as defined in the proceedings or indentures authorizing the issuance of the bonds, the attorney general shall institute appropriate proceedings by mandamus or other legal remedies to compel the political subdivision or its officers, agents, and employees to cure the default by performing those duties

which they are legally obligated to perform. These proceedings shall be brought and venue shall be in a district court of Travis County.

"(b) The provisions of this section are cumulative of any other rights or remedies to which the bondholders may be entitled.

**"Sec. 17.133. Sale of Bonds by Board**

"(a) The board may sell or dispose of bonds purchased with money in the water development account. The board may not sell the bonds for less than amortized value and accrued interest.

"(b) The board shall first offer the bonds at their amortized value plus accrued interest to the issuing political subdivision at least 30 days before the date of requesting competitive bids.

"(c) If the political subdivision fails to give notice to the board of its desire to acquire the bonds at amortized value and accrued interest within the 30-day period, then the board shall give notice of the sale of the bonds, receive competitive bids, and conduct the sale, all in the manner provided for the sale of bonds, except the board may waive any requirement for good faith checks.

**"Sec. 17.134. Proceeds From Sale**

"The proceeds from the sale of political subdivision bonds held by the board shall be credited to the water development account, except that accrued interest shall be credited to the interest and sinking fund.

**"Sec. 17.135. Construction Contract Requirements**

"The governing body of each political subdivision receiving financial assistance from the board shall require in all contracts for the construction of a project:

"(1) that payment be made in partial payments as the work progresses;

"(2) that each partial payment shall not exceed 90 percent of the amount due at the time of the payment as shown by the engineer of the project; and

"(3) that payment of the 10 percent remaining due upon completion of the contract shall be made only after:

"(A) approval by the engineer for the political subdivision as required under the bond proceedings; and

"(B) certification by the board that the work to be done under the contract has been completed and performed in a satisfactory manner and in accordance with sound engineering principles and practices.

**"Sec. 17.136. Filing Construction Contract**

"The political subdivision shall file with the department a certified copy of each construction contract it enters into for the construction of all or part of a project. Each contract shall contain or have attached to it the specifications, plans, and details of all work included in the contract.

**"Sec. 17.137. Inspection of Projects**

"(a) The department may inspect the construction of a project at any time to assure that:

"(1) the contractor is substantially complying with the engineering plans of the project as submitted when approval of the feasibility of the project was sought; and

"(2) the contractor is constructing the project in accordance with sound engineering principles.

"(b) Inspection of a project by the department does not subject the state to any civil liability.

**"Sec. 17.138. Alteration of Plans**

"After board approval of engineering plans, a political subdivision may not make any substantial or material alteration in the plans unless the board authorizes the alteration.

**"Sec. 17.139. Certificate of Approval**

"The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

"(1) failure to construct the project according to the plans as the board approved them or altered with the board's approval;

"(2) failure to construct the works in accordance with sound engineering principles; or

"(3) failure to comply with any term of the contract.

"[Sections 17.140–17.170 reserved for expansion]

**"SUBCHAPTER E. BOND PURCHASES FOR WATER  
QUALITY ENHANCEMENT PURPOSES****"Sec. 17.171. Financial Assistance**

"The board shall use funds in the water quality enhancement account to provide financial assistance through the purchase of bonds or other obligations of political subdivisions pursuant to an application for financial assistance approved by it.

**"Sec. 17.172. Other Financial Assistance**

"The board may purchase bonds or other obligations that are secondary or subordinate to other bonds or obligations issued by the political subdivision, including outstanding prior lien bonds previously issued by the political subdivision when this will avoid or reduce the necessity for issuing junior lien bonds for subsequent sale to the board. However, the security for both prior lien and junior lien bonds shall be pledged from substantially the same sources of revenue.

**"Sec. 17.173. Bond Maturity**

"The board may not purchase bonds or other obligations which have a maturity date more than 50 years from the date of issuance.

**"Sec. 17.174. Interest Rate**

"(a) The bonds and other obligations purchased by the board with money in the water quality enhancement account pursuant to Subchapter F of this chapter shall bear the weighted average effective interest rate on all water quality enhancement bonds previously sold. The bonds shall bear coupons evidencing interest at a rate or combination of rates that will approximate the effective rate as nearly as the board deems practicable. The effective rate shall be determined by the payment of premiums or the deduction of discounts as necessary.

"(b) Except as provided in Subsection (c) of this section, bonds and other obligations purchased by the board with money in the water quality enhancement account pursuant to Subchapter G of this chapter shall bear the weighted average effective interest rate on all water quality enhancement bonds previously sold, plus one-half of one percent. The bonds shall bear coupons evidencing interest at a rate or combination of rates that will approximate the effective rate as nearly as the board deems practicable. The effective rate shall be determined by the payment of premiums or the deduction of discounts as necessary.

"(c) Outstanding prior lien bonds purchased by the board under Section 17.172 of this code need not bear the interest rate provided in Subsection (b) of this section but may be purchased for such price or prices as will accomplish the objectives of Section 17.172 of this code.

**"Sec. 17.175. Approval and Registration**

"The board shall not purchase any bonds or other obligations that have not been approved by the attorney general and registered by the comptroller.

**"Sec. 17.176. Bonds Incontestable**

"The bonds or other obligations issued by a political subdivision are valid, binding, and incontestable after:

- "(1) approval by the attorney general;
- "(2) registration by the comptroller; and
- "(3) purchase by and delivery to the board.

**"Sec. 17.177. Security for Bonds**

"(a) Bonds or other obligations purchased by the board under this subchapter shall be supported by:

- "(1) all or part of the net revenue from the operation of the treatment works;
- "(2) taxes levied by the political subdivision for the purpose; or
- "(3) a combination of taxes and net revenue, and revenue from other available sources.

"(b) As used in this section, 'net revenue' means gross revenue less the amount necessary to provide for principal, interest, and reserve requirements of bonds, if any, superior to those purchased by the board and the amount necessary to pay the cost of maintaining and operating the treatment works.

"(c) The board has the exclusive responsibility to specify terms and conditions of the financial assistance, including all maturity schedules which are necessary in the opinion of the board to achieve the best security for the state which the applicant is reasonably capable of providing. No term or condition shall be specified by the board which would prevent financial assistance from being available to an applicant for construction of treatment works approved by the board.

**"Sec. 17.178. Default**

"(a) In the event of a default in payment of the principal of or interest on bonds or other obligations purchased by the board or of a default in payment of amounts due under a loan agreement executed under the provisions of Subchapters F and G of this chapter or of a failure to perform any term or condition agreed to or of any other default as defined in the proceedings or indentures authorizing the issuance of the bonds or in any other obligation or loan agreement, the attorney general shall institute appropriate proceedings by mandamus or other legal remedies to compel the political subdivision or its officers, agents, and employees to cure the default by performing those duties which they are legally obligated to perform. These proceedings shall be brought and venue shall be in a district court of Travis County.

"(b) The provisions of this section are cumulative of any other rights or remedies to which the bondholders may be entitled.

**"Sec. 17.179. Sale of Bonds by Board**

"(a) The board may sell or dispose of bonds or other obligations purchased with money in the water quality enhancement account at not less than amortized value and accrued interest.

"(b) The board shall first offer the bonds or other obligations at their amortized value plus accrued interest to the issuing political subdivision at least 30 days before the date of requesting competitive bids.

"(c) If the political subdivision fails to give notice to the board of its desire to acquire the bonds or other obligations at amortized value and

accrued interest within the 30-day period, then the board shall give notice of the sale of the bonds, receive competitive bids, and conduct the sale of such bonds or other obligations so purchased, all in the manner provided for the sale of bonds, except the board may waive any requirement for good faith checks.

**"Sec. 17.180. Proceeds From Sale**

"The proceeds from the sale of such political subdivision bonds or other obligations held by the board shall be credited to the water quality enhancement account, except that accrued interest shall be credited to the interest and sinking fund.

"[Sections 17.181–17.220 reserved for expansion]

**"SUBCHAPTER F. PROGRAM FOR FINANCIAL ASSISTANCE  
FOR WASTE TREATMENT CONSTRUCTION**

**"Sec. 17.221. Purpose**

"The purpose of this subchapter is to provide for making loans of water quality enhancement funds authorized by Article III, Section 49–d–1, as amended, of the Texas Constitution to political subdivisions of the state for use as state matching funds for obtaining maximum federal grants for the construction of treatment works.

**"Sec. 17.222. Definitions**

"In this subchapter:

"(1) 'Water quality enhancement' means the construction of treatment works by political subdivisions with loans provided under this subchapter.

"(2) 'Treatment works' means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement this chapter or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be a part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste or facilities to provide for the collection, control, and disposal of waste heat.

"(3) 'Construction' means any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, title, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, the expense of any condemnation or other legal proceeding, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

"(4) 'Water quality enhancement funds' means the proceeds from the sale of Texas Water Development Bonds issued under the authority of Article III, Section 49–d–1, as amended, of the Texas Constitution.

"(5) 'Political subdivision' means the state, a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a part; .

"(6) 'Loan' means purchase by the state of the bonds or other obligations of a political subdivision with water quality enhancement funds or entry by the state into a loan agreement with any political subdivision for a direct loan of water quality enhancement funds.

"(7) 'Financial assistance' means any loan of water quality enhancement funds made to a political subdivision for the construction of treatment works through the purchase of bonds or other obligations of the political subdivision or pursuant to a loan agreement.

**"Sec. 17.223. Financial Assistance**

"The board may use water quality enhancement funds to provide financial assistance to political subdivisions for purposes of water quality enhancement.

**"Sec. 17.224. Authority of Political Subdivision**

"(a) A political subdivision may apply to the board for financial assistance and may use water quality enhancement funds to pay for construction of treatment works in the manner provided in this subchapter.

"(b) A political subdivision may exercise any power necessary to apply for, receive, use, and repay water quality enhancement funds, including the power to enter into loan contracts and agreements and to use any of its income and revenues to repay the loan.

**"Sec. 17.225. Application for Assistance**

"In an application to the board for financial assistance, the applicant shall include:

"(1) the name of the political subdivision and its principal officers;

"(2) a citation of the law under which the political subdivision operates and was created;

"(3) the total cost of the treatment works;

"(4) the amount of state financial assistance requested;

"(5) the method for obtaining the financial assistance, whether by purchase of bonds or other obligations of the political subdivision, by direct loan, or by a combination of these two methods;

"(6) the plan for repaying the financial assistance; and

"(7) any other information the board requires to have an adequate understanding of proposals made in the application.

**"Sec. 17.226. Action on Application**

"(a) After an application is received for financial assistance, the executive director shall submit the application to the board together with the comments and recommendations of the development fund manager relating to the best method for making the financial assistance available.

"(b) The board may grant the application in whole or part or may deny the application.

"(c) The board has the sole responsibility and authority for selecting the political subdivisions to whom financial assistance may be provided and, in consultation with and pursuant to agreement with the political subdivision, shall determine the location, time, design, scope, and all other aspects of the construction to be performed.

“(d) The board shall review and approve plans and specifications for all treatment works for which financial assistance is requested. The provisions of Section 12, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945, as amended (Article 4477—1, Vernon's Texas Civil Statutes), do not apply to treatment works approved under this subchapter.

“(e) Except as specifically provided in this subchapter, the deliberations, proposals, decisions, and other actions of the board under this subchapter do not require the concurrence or approval of any other governmental agency, board, commission, council, political subdivision, or other governmental entity.

**“Sec. 17.227. Considerations in Passing on Application**

“In passing on an application from a political subdivision for financial assistance, the board shall consider:

“(1) the public benefit to be derived from the project and the propriety of state participation; and

“(2) the availability of revenue to the political subdivision from all sources for the ultimate repayment of the cost of the project, including interest.

**“Sec. 17.228. Conditions for Obtaining Financial Assistance**

“Before financial assistance is provided to a political subdivision, the following conditions must be met:

“(1) the project must be approved by the board and the appropriate federal agency if applicable;

“(2) the political subdivision must adopt any necessary ordinance, rule, order, or resolution which in the judgment of the board is necessary to comply with the contract and requirements of the federal government.

**“Sec. 17.229. Providing Financial Assistance**

“If the board grants an application in whole or part, financial assistance shall be funded in accordance with Subchapter E of this chapter.

**“Sec. 17.230. Direct Loans**

“(a) If a political subdivision in the judgment of the board is unable to issue bonds or other obligations for a project in the state for which a federal grant is to be made under the Federal Water Pollution Control Act, as amended, then the board may provide financial assistance to the political subdivision by agreeing to pay from water quality enhancement funds the amount required by federal law of the estimated reasonable cost of the project.

“(b) Before the delivery of any water quality enhancement funds to the political subdivision, the board with the advice of the development fund manager and the political subdivision shall execute a loan agreement which shall provide that the political subdivision shall pay into the appropriate account not less than the amount necessary to repay the principal of and interest on the loan over the period of time and under the terms and conditions which are mutually agreeable to the board and the political subdivision. The contract may also include any other terms and conditions which the board may require.

“(c) Each political subdivision may charge and collect necessary fees, rentals, rates, and charges for the use, occupancy, and availability of its treatment works and any of its other properties, buildings, structures, operations, utilities, systems, activities, and facilities so that it may make all payments required by its loan agreement. The political subdivision shall pledge such amounts to make those payments.



“(d) The political subdivision may pledge its ad valorem taxes, if any, and levy and collect the taxes for the purpose of making all or any part of the payments required by its loan agreement. The taxes shall be in addition to all other ad valorem taxes permitted by law but may not exceed, together with other ad valorem taxes, any maximum imposed by the Texas Constitution.

“(e) Each loan agreement executed pursuant to this subchapter and the appropriate proceedings authorizing its execution shall be submitted to the attorney general for examination before the delivery of the money to the political subdivision. If he finds that the loan agreement has been authorized and executed in accordance with law, that the provisions are valid, and that the political subdivision has demonstrated to his reasonable satisfaction that the payments required by the agreement can be made from the sources pledged, he may approve the agreement.

**“Sec. 17.231. Use of Funds; Federal Requirement Satisfied**

“When bonds or other obligations are purchased or a loan agreement is approved by the attorney general, water quality enhancement funds shall be delivered to the political subdivisions entitled to receive them and shall be used only to pay for construction costs of treatment works approved as provided in this subchapter. The purchase of bonds and other obligations as provided in this code and the making of direct loans as provided in Section 17.230 of this code together constitute payment by the state of the amount required by federal law of the estimated reasonable construction costs of all projects in the state for which federal grants are to be made under the Federal Water Pollution Control Act, as amended, or any similar law.

**“Sec. 17.232. Construction Contract Requirements**

“(a) In contracts for the construction of treatment works, the governing body of each political subdivision receiving financial assistance shall require:

“(1) payment to be made in partial payments as the work progresses;

“(2) each bidder to furnish a bid guarantee equivalent to five percent of the bid price; and

“(3) each contractor awarded either a design/construct contract or construction contract to furnish performance and payment bonds, each of which must include without limitation guarantees that work done under the contract will be completed and performed:

“(A) according to approved plans and specifications; and

“(B) in accordance with sound construction principles and practices.

“(b) Each bond must:

“(1) be in an amount of not less than 100 percent of the contract price; and

“(2) remain in effect for one year beyond the date of approval by the engineer of the political subdivision.

“(c) No valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications.

“(d) With the approval of its governing body, a political subdivision in addition to the other requirements of this section may require in a contract for construction of treatment works that:

“(1) partial payment not exceed 90 percent of the amount due at the time of the payment as shown by the engineer of the project; and

“(2) payment of the 10 percent remaining due upon completion of the contract shall be made only after approval by:

“(A) the engineer for the political subdivision as required under the bond proceedings; and

“(B) the governing body of the political subdivision by a resolution or other formal action.

**“Sec. 17.233. Filing Construction Contract**

“The political subdivision shall file with the development fund manager a certified copy of each construction contract it enters into for the construction of all or part of the treatment works. Each contract shall contain or have attached to it the specifications, plans, and details of all work included in the contract.

**“Sec. 17.234. Department Inspection**

“(a) The department may inspect the construction of treatment works at any time to assure that:

“(1) the contractor is substantially complying with the engineering plans of the treatment works as submitted when approval of the feasibility of the treatment works was sought; and

“(2) the contractor is constructing the treatment works in accordance with sound construction principles.

“(b) Inspection of treatment works by the department does not subject the state to any civil liability.

**“Sec. 17.235. Alteration of Plans**

“After board approval of engineering plans, a political subdivision may not make any substantial or material alteration in the plans unless the board authorizes the alteration.

**“Sec. 17.236. Certificate of Approval**

“The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

“(1) failure to construct the treatment works according to the plans as the board approved them or altered with the board's approval;

“(2) failure to construct the works in accordance with sound engineering principles; or

“(3) failure to comply with any term of the contract.

“[Sections 17.237–17.270 reserved for expansion]

**“SUBCHAPTER G. ALTERNATIVE PROGRAM FOR  
FINANCIAL ASSISTANCE FOR CONSTRUCTION OF TREATMENT WORKS**

**“Sec. 17.271. Purpose**

“The purpose of this subchapter is to provide for making loans of water quality enhancement funds authorized by Article III, Section 49-d-1, as amended, of the Texas Constitution to political subdivisions of the state for the construction of treatment works.

**“Sec. 17.272. Definitions**

“In this subchapter:

“(1) ‘Water quality enhancement’ means the construction of treatment works by political subdivisions with loans provided with water quality enhancement funds.

“(2) ‘Treatment works’ means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement this chapter or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including sites therefor and acquisition of the land that will be a part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste; or facilities to provide for the collection, control, and disposal of waste heat.

“(3) ‘Construction’ means any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, title, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, the expense of any condemnation or other legal proceeding, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

“(4) ‘Water quality enhancement funds’ means the proceeds from the sale of Texas Water Development Bonds issued under the authority of Article III, Section 49-d-1, as amended, of the Texas Constitution.

“(5) ‘Political subdivision’ means the state, a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party.

“(6) ‘Loans’ means purchase by the state of the bonds or other obligations of a political subdivision with water quality enhancement funds.

“(7) ‘Financial assistance’ means any loan of water quality enhancement funds made to a political subdivision for the construction of treatment works through the purchase of bonds or other obligations of the political subdivision.

**“Sec. 17.273. Financial Assistance**

“The board may use water quality enhancement funds to provide financial assistance to political subdivisions for purposes of water quality enhancement.

**“Sec. 17.274. Authority of Political Subdivision**

“A political subdivision may apply to the board for financial assistance and may use water quality enhancement funds for construction of treatment works in the manner provided in this subchapter.

**“Sec. 17.275. Application for Assistance**

“In an application to the board for financial assistance, the applicant shall include:

“(1) the name of the political subdivision and its principal officers;

"(2) a citation of the law under which the political subdivision operates and was created;

"(3) the estimated total cost of construction of the treatment works;

"(4) the amount of state financial assistance requested;

"(5) the method for obtaining the financial assistance, whether by purchase of bonds or purchase of other obligations of the political subdivision;

"(6) the plan for repaying the financial assistance; and

"(7) any other information the board requires.

**"Sec. 17.276. Considerations in Passing on Application**

"In passing on an application from a political subdivision for financial assistance, the board shall consider:

"(1) the water quality needs of the waters into which effluent from the treatment works will be discharged and the benefit of the treatment works to such water quality needs in relation to the needs of other waters requiring state assistance in any manner and the benefits of those treatment works to the other waters;

"(2) the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the treatment works, including interest;

"(3) whether the political subdivision can reasonably finance the treatment works without assistance from the state;

"(4) the relationship of the treatment works to the overall, state-wide water quality needs; and

"(5) the relationship of the treatment works to water quality planning for the state.

**"Sec. 17.277. Action on Application**

"(a) After an application is received for financial assistance, the executive director shall submit the application to the board together with comments and recommendations of the development fund manager concerning the best method of making financial assistance available.

"(b) The board may grant the application in whole or part or may deny the application.

"(c) The board has the sole responsibility and authority for selecting the political subdivisions to whom financial assistance may be provided, the amount of any such assistance, and in consultation with and pursuant to agreement with the political subdivision, the board shall determine the location, time, design, scope, and all other aspects of the construction of treatment works to be performed.

"(d) The board shall review and approve plans and specifications for all treatment works for which financial assistance is provided in any amount from water quality enhancement funds or funds granted under the Federal Water Pollution Control Act, as amended. The Texas Department of Health Resources shall review and approve plans in those cases where such assistance has not been requested except when notice of intention to apply for the financial assistance has been given to the board in which case the board shall perform review and approval functions. Duplicate review and approval will not be performed and actions on review and approval shall be fully interchangeable between the board and the Texas Department of Health Resources.

"(e) The deliberations, proposals, decisions, and other actions of the board under this subchapter do not require the concurrence or approval

of any other governmental agency, board, commission, council, political subdivision, or other governmental entity.

"(f) If the board grants an application in whole or part, financial assistance shall be funded by the board in accordance with Subchapter E of this chapter.

**"Sec. 17.278. Approval of Application**

"The board by resolution may approve an application if, after considering the factors listed in Section 17.276 of this code and any other relevant factors, the board finds:

"(1) that the public interest will benefit from state participation in the financing of the treatment works; and

"(2) that the political subdivision cannot reasonably finance the treatment works without state assistance in the amount finally approved by the board.

**"Sec. 17.279. Construction Contract Requirements**

"(a) In contracts for the construction of treatment works, the governing body of each political subdivision receiving financial assistance shall require:

"(1) payment to be made in partial payments as the work progresses;

"(2) each bidder to furnish a bid guarantee equivalent to five percent of the bid price;

"(3) each contractor awarded either a design/construct contract or construction contract to furnish performance and payment bonds, each of which must include without limitation guarantees that work done under the contract will be completed and performed:

"(A) according to approved plans and specifications; and

"(B) in accordance with sound construction principles and practices.

"(b) Each bond must:

"(1) be in an amount of not less than 100 percent of the contract price; and

"(2) remain in effect for one year beyond the date of approval by the engineer of the political subdivision.

"(c) No valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications.

"(d) With the approval of its governing body, a political subdivision in addition to the other requirements of this section may require in a contract for construction of treatment works that:

"(1) partial payment not exceed 90 percent of the amount due at the time of the payment as shown by the engineer of the project; and

"(2) payment of the 10 percent remaining due upon completion of the contract shall be made only after approval by:

"(A) the engineer for the political subdivision as required under the bond proceedings; and

"(B) the governing body of the political subdivision by a resolution or other formal action.

**"Sec. 17.280. Filing Construction Contract**

"The political subdivision shall file with the department a certified copy of each construction contract it enters into for the construction of all or part of the treatment works. Each contract shall contain or have

attached to it the specifications, plans, and details of all work included in the contract.

**"Sec. 17.281. Department Inspection**

"(a) The department may inspect the construction of treatment works at any time to assure that:

"(1) the contractor is substantially complying with the engineering plans of the treatment works as submitted when approval of the feasibility of the treatment works was sought; and

"(2) the treatment works are being constructed in accordance with sound construction principles.

"(b) Inspection of treatment works by the department does not subject the state to any civil liability.

**"Sec. 17.282. Alteration of Plans**

"After board approval of engineering plans, a political subdivision may not make any substantial or material alteration in the plans unless the board authorizes the alteration.

**"Sec. 17.283. Certificate of Approval**

"The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

"(1) failure to construct the treatment works according to the plans as the board approved them or altered with the board's approval;

"(2) failure to construct the works in accordance with sound engineering principles; or

"(3) failure to comply with any term of the contract.

**"Sec. 17.284. Obtaining Financial Assistance**

"(a) In order to obtain financial assistance under this subchapter, a political subdivision may authorize and issue revenue bonds for the purpose of constructing treatment works and sell such bonds to the board in such amounts as may be determined by the governing body of the political subdivision and approved by the board.

"(b) Notwithstanding the provisions of Article 1112, Revised Civil Statutes of Texas, 1925, as amended, or any other general or special law or charter provisions to the contrary, a political subdivision may authorize, issue, and sell such revenue bonds as provided herein and create any encumbrance in connection therewith by a majority vote of the governing body of the political subdivision without the necessity of any election.

**"CHAPTER 18. WEATHER MODIFICATION**

**"SUBCHAPTER A. GENERAL PROVISIONS**

**"Section 18.001. Short Title**

"This chapter may be cited as the Weather Modification Act.

**"Sec. 18.002. Definitions**

"As used in this chapter:

"(1) 'Commission' means the Texas Water Commission.

"(2) 'Board' means the Texas Water Development Board.

"(3) 'Executive director' means the executive director of the Texas Department of Water Resources.

"(4) 'Department' means the Texas Department of Water Resources.

"(5) 'Weather modification and control' means changing or controlling, or attempting to change or control, by artificial methods the natural development of atmospheric cloud forms or precipitation forms which occur in the troposphere.

“(6) ‘Operation’ means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area over one continuing time interval not exceeding four years.

“(7) ‘Research and development’ means theoretical analysis, exploration, experimentation, and the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

“[Sections 18.003–18.010 reserved for expansion]

#### **“SUBCHAPTER B. POWERS AND DUTIES OF BOARD**

##### **“Sec. 18.011. Rules—In General**

“The board may make rules necessary to exercise the powers and to perform their duties under this chapter.

##### **“Sec. 18.012. Rules—Licenses and Permits**

“In order to effectuate the purposes of this chapter, the commission may make rules establishing procedures and conditions for the issuance of licenses and permits.

##### **“Sec. 18.013. Rules—Safety**

“The board may make rules establishing standards and instructions to govern the carrying out of research or projects in weather modification and control that the board considers necessary or desirable to minimize danger to health or property.

##### **“Sec. 18.014. Studies; Investigations; Hearings**

“The department may make any studies or investigations, obtain any information, and hold any hearings necessary or proper to administer or enforce this chapter or any rules or orders issued under this chapter.

##### **“Sec. 18.015. Advisory Committees**

“The board may establish advisory committees to advise the board and to make recommendations to the board concerning legislation, policies, administration, research, and other matters.

##### **“Sec. 18.016. Personnel**

“The executive director may, as provided by the General Appropriations Act, appoint and fix the compensation of any personnel, including specialists and consultants, necessary to perform duties and functions under this chapter.

##### **“Sec. 18.017. Materials and Equipment**

“The department may acquire in the manner provided by law any materials, equipment, and facilities necessary to the performance of its duties and functions under this chapter.

##### **“Sec. 18.018. Interstate Compacts**

“The executive director may represent the state in matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification and control.

##### **“Sec. 18.019. Contracts, Cooperative Agreements, Etc.**

“(a) The department may cooperate with public or private agencies to promote the purposes of this chapter.

“(b) The department may enter into cooperative agreements with the United States or any of its agencies, or with counties and cities of this state, or with any private or public agencies for conducting weather modification or cloud-seeding operations.

“(c) The department may represent the state, counties, cities, and public and private agencies in contracting with private concerns for the performance of weather modification or cloud-seeding operations.

**“Sec. 18.020. Promotion of Research and Development**

“(a) In order to assist in expanding the theoretical and practical knowledge of weather modification and control, the department shall promote continuous research and development in:

“(1) the theory and development of methods of weather modification and control, including processes, materials, and devices related to these methods;

“(2) the utilization of weather modification and control for agricultural, industrial, commercial, and other purposes; and

“(3) the protection of life and property during research and operational activities.

“(b) The executive director with approval of the board may conduct and may contract for research and development activities relating to the purposes of this section.

**“Sec. 18.021. Grants, Gifts, Etc.**

“Subject to any limitations imposed by law, the department may accept federal grants, private gifts, and donations from any other source. Unless the use of the money is restricted or subject to any limitations provided by law, the department may spend it for the administration of this chapter or may by grant, contract, or cooperative arrangement use the money to encourage research and development by a public or private agency.

**“Sec. 18.022. Disposition of License and Permit Fees**

“The department shall deposit all license and permit fees in the State Treasury.

“[Sections 18.023–18.050 reserved for expansion]

**“SUBCHAPTER C. LICENSES AND PERMITS**

**“Sec. 18.051. License and Permit Required**

“Except as provided by rule of the board under Section 18.052 of this code, no person may engage in activities for weather modification and control:

“(1) without a weather modification license and a weather modification permit issued by the commission; or

“(2) in violation of any term or condition of the license or the permit.

**“Sec. 18.052. Exemptions**

“The board, to the extent it considers exemptions practical, shall provide by rule for exempting the following activities from the license and permit requirements of this chapter:

“(1) research, development, and experiments conducted by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations;

“(2) laboratory research and experiments;

“(3) activities of an emergent nature for protection against fire, frost, sleet, or fog; and

“(4) activities normally conducted for purposes other than inducing, increasing, decreasing, or preventing precipitation or hail.



**"Sec. 18.053. Issuance of License**

"(a) The commission, in accordance with the rules, shall issue a weather modification license to each applicant who:

"(1) pays the license fee; and

"(2) demonstrates, to the satisfaction of the commission, competence in the field of meteorology which is reasonably necessary to engage in weather modification and control activities.

"(b) If the applicant is an organization, the competence must be demonstrated by the individual or individuals who are to be in control and in charge of the operation for the applicant.

**"Sec. 18.054. License Fee**

"The fee for an original or renewal license is \$50.

**"Sec. 18.055. Expiration Date**

"Each original or renewal license expires at the end of the state fiscal year for which it was issued.

**"Sec. 18.056. Renewal License**

"At the expiration of the license period, the commission shall issue a renewal license to each applicant who pays the license fee and who has the qualifications necessary for issuance of an original license.

"[Sections 18.057–18.080 reserved for expansion]

**"Sec. 18.081. Issuance of Permit**

"(a) The commission, in accordance with the rules and on a finding that the weather modification and control operation as proposed in the permit application will not significantly dissipate the clouds and prevent their natural course of developing rain in the area where the operation is to be conducted to the material detriment of persons or property in that area, may issue a weather modification permit to each applicant who:

"(1) holds a valid weather modification license;

"(2) pays the permit fee;

"(3) publishes a notice of intention and submits proof of publication as required by this chapter; and

"(4) furnishes proof of financial responsibility.

"(b) The commission shall, if requested by at least 25 persons, hold at least one public hearing in the area where the operation is to be conducted prior to the issuance of a permit.

**"Sec. 18.082. Permit Fee**

"The fee for each permit is \$25.

**"Sec. 18.083. Scope of Permit**

"A separate permit is required for each operation. If an operation is to be conducted under contract, a permit is required for each separate contract. The commission shall not issue a permit for a contracted operation unless it covers a continuous period not to exceed four years.

**"Sec. 18.084. Application and Notice of Intention**

"Before undertaking any operation, a licensee shall file an application for a permit and shall have a notice of intention published as required by this chapter.

**"Sec. 18.085. Content of Notice**

"In the notice of intention, the applicant shall include:

"(1) the name and address of the licensee;

"(2) the nature and object of the intended operation and the person or organization on whose behalf it is to be conducted;

"(3) the area in which and the approximate time during which the operation is to be conducted;

“(4) the area which is intended to be affected by the operation;  
and

“(5) the materials and methods to be used in conducting the operation.

**“Sec. 18.086. Publication of Notice**

“The notice of intention shall be published at least once a week for three consecutive weeks in a newspaper of general circulation published in each county in which the operation is to be conducted and in each county which includes any part of the affected area. If in any such county no newspaper of general circulation is published, then publication shall be made in a newspaper having general circulation in the county.

**“Sec. 18.087. Proof of Publication; Affidavit**

“The applicant shall file proof of the publication, together with the publishers’ affidavits, with the commission during the 15-day period immediately following the date of the last publication.

**“Sec. 18.088. Proof of Financial Responsibility**

“Proof of financial responsibility is made by showing to the satisfaction of the commission that the licensee has the ability to respond in damages for liability which might reasonably result from the operation for which the permit is sought.

**“Sec. 18.089. Modification of Permit**

“The commission may modify the terms and conditions of a permit if:

“(1) the licensee is first given notice and a reasonable opportunity for a hearing on the need for a modification; and

“(2) it appears to the commission that a modification is necessary to protect the health or property of any person.

**“Sec. 18.090. Scope of Activity**

“Once a permit is issued, the licensee shall confine his activities substantially within the limits of time and area specified in the notice of intention, except to the extent that the limits are modified by the commission. He shall also comply with any terms and conditions of the permit as originally issued or as subsequently modified by the commission.

**“Sec. 18.091. Records and Reports**

“(a) A licensee shall keep a record of each operation conducted under permit, showing:

“(1) the method employed;

“(2) the type of equipment used;

“(3) the kind and amount of each material used;

“(4) the times and places the equipment is operated;

“(5) the name and post-office address of each individual, other than the licensee, who participates or assists in the operation; and

“(6) other information required by the board.

“(b) The board shall require written reports covering each operation, whether it is exempt or conducted under a permit.

“(c) At the time and in the manner required by the board, a licensee shall submit a written report containing the information described in Subsection (a) of this section.

“(d) All information on an operation shall be submitted to the department before it is released to the public.

“(e) The reports and records in the custody of the department shall be kept open for public inspection.

“[Sections 18.092–18.120 reserved for expansion]

**"SUBCHAPTER D. SANCTIONS****"Sec. 18.121. Suspension; Revocation; Refusal to Renew**

"(a) The commission may suspend or revoke a license or permit if it appears that the licensee:

"(1) no longer has the qualifications necessary for the issuance of an original license or permit; or

"(2) has violated any provision of this chapter.

"(b) The commission may refuse to renew the license of, or to issue another permit to, any applicant who has failed to comply with any provision of this chapter.

**"Sec. 18.122. Hearing Required**

"The commission may not suspend or revoke a license or permit without first giving the licensee notice and a reasonable opportunity to be heard with respect to the grounds for the commission's proposed action.

**"Sec. 18.123. Record of Hearing**

"The commission shall have a record made of all proceedings at each hearing held under Section 18.122 of this code and shall have the record filed with its findings and conclusions.

"[Sections 18.124–18.150 reserved for expansion]

**"Sec. 18.151. Immunity of State**

"The state and its officers and employees are immune from liability for all weather modification and control activities conducted by private persons and groups.

**"Sec. 18.152. Private Legal Relationships**

"(a) This chapter does not affect private legal relationships, except that an operation conducted under the license and permit requirements of this chapter is not an ultrahazardous activity which makes the participants subject to liability without fault.

"(b) The fact that a person holds a license or permit under this chapter or that he has complied with this chapter or the regulations issued under this chapter is not admissible as evidence in any legal proceeding brought against him.

"[Sections 18.153–18.170 reserved for expansion]

**"Sec. 18.171. Penalty**

"(a) A person who violates any provision of this chapter or any valid regulation or order issued under this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000, or by confinement in the county jail for not more than 10 days, or by both.

"(b) A separate offense is committed each day a violation continues.

**"Sec. 18.172. Enforcement**

"(a) Whenever it appears that a person has violated or is violating or is threatening to violate any provision of this chapter or any rule, license, permit, or order of the commission or board, then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

"(b) Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or

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any rule, license, permit, or order of the commission or board, the district court shall grant the injunctive relief the facts may warrant.

“(c) At the request of the executive director, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty as authorized in Subsection (a) of this section.

“[Chapters 19–25 reserved for expansion]

**“SUBTITLE D. WATER QUALITY CONTROL**

**“CHAPTER 26. WATER QUALITY CONTROL**

**“SUBCHAPTER A. ADMINISTRATIVE PROVISIONS**

**“Section 26.001. Definitions**

“As used in this chapter:

“(1) ‘Board’ means the Texas Water Development Board.

“(2) ‘Commission’ means the Texas Water Commission.

“(3) ‘Executive director’ means the executive director of the Texas Department of Water Resources.

“(4) ‘Department’ means the Texas Department of Water Resources.

“(5) ‘Water’ or ‘water in the state’ means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

“(6) ‘Waste’ means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.

“(7) ‘Sewage’ means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

“(8) ‘Municipal waste’ means waterborne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system.

“(9) ‘Recreational waste’ means waterborne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area.

“(10) ‘Agricultural waste’ means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term ‘agricultural waste’ does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farm land.

“(11) ‘Industrial waste’ means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.

“(12) ‘Other waste’ means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other

than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste, that may cause impairment of the quality of water in the state. 'Other waste' also includes tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farmland that may cause impairment of the quality of the water in the state.

"(13) 'Pollution' means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

"(14) 'Sewer system' means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

"(15) 'Treatment facility' means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing, or stabilizing waste.

"(16) 'Disposal system' means any system for disposing of waste, including sewer systems and treatment facilities.

"(17) 'Local government' means an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution.

"(18) 'Permit' means an order issued by the commission in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made.

"(19) 'To discharge' includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

**"Sec. 26.002. Ownership of Underground Water**

"Nothing in this chapter affects ownership rights in underground water.

**"Sec. 26.003. Policy of This Subchapter**

"It is the policy of this state and the purpose of this subchapter to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state; to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

"[Sections 26.004–26.010 reserved for expansion]

**"SUBCHAPTER B. GENERAL POWERS AND DUTIES**

**"Sec. 26.011. In General**

"Except as otherwise specifically provided, the department shall administer the provisions of this chapter and shall establish the level of quality to be maintained in, and shall control the quality of, the water in this state as provided by this chapter. Waste discharges or impending waste discharges covered by the provisions of this chapter are subject to reasonable rules or orders adopted or issued by the department in the

public interest. The department has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities.

**"Sec. 26.012. State Water Quality Plan**

"The executive director shall prepare and develop a general, comprehensive plan for the control of water quality in the state which shall be used as a flexible guide by the department when approved by the board.

**"Sec. 26.013. Research, Investigations**

"The executive director shall conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under this chapter.

**"Sec. 26.014. Power to Enter Property**

"The members of the commission and employees and agents of the department are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state. Members, employees, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, or agent is refused the right to enter in or on public or private property under this authority, the executive director may invoke the remedies authorized in Section 26.123 of this code.

**"Sec. 26.015. Power to Examine Records**

"The members of the commission and employees and agents of the department may examine during regular business hours any records or memoranda pertaining to the operation of any sewer system, disposal system, or treatment facility or pertaining to any discharge of waste.

**"Sec. 26.016. Enforcement Proceedings**

"The executive director may institute court proceedings to compel compliance with the provisions of this chapter or the rules, orders, permits, or other decisions of the department.

**"Sec. 26.017. Cooperation**

"The department shall:

"(1) encourage voluntary cooperation by the people, cities, industries, associations, agricultural interests, and representatives of other interests in preserving the greatest possible utility of water in the state;

"(2) encourage the formation and organization of cooperative groups, associations, cities, industries, and other water users for the purpose of providing a medium to discuss and formulate plans for attainment of water quality control;

"(3) establish policies and procedures for securing close cooperation among state agencies that have water quality control functions; and

"(4) cooperate with the governments of the United States and other states and with official or unofficial agencies and organizations with respect to water quality control matters and with respect to formulation of interstate water quality control compacts or agreements, and when representation of state interests on a basin planning agency for water quality purposes is required under Section 3(c) of the Federal Water Pollution Control Act, as amended, or other federal legislation having a similar purpose, the representation shall include an officer or employee of the board.

**"Sec. 26.018. Contracts, Instruments**

"With the approval of the board, the executive director may make contracts and execute instruments that are necessary or convenient to the exercise of the department's powers or the performance of its duties.

**"Sec. 26.019. Orders**

"(a) The commission is authorized to issue orders and make determinations necessary to effectuate the purposes of this chapter.

"(b) The commission shall set forth the findings on which it bases any order granting or denying special relief requested of the commission or involving a determination following a hearing on an alleged violation of Section 26.121 of this code or directing a person to perform or refrain from performing a certain act or activity.

**"Sec. 26.0191. Temporary Orders Prior to Notice and Hearing**

"(a) The commission may issue temporary orders relating to the discharge of waste without notice and hearing, or with such notice and hearing as the commission considers practicable under the circumstances, when this is necessary to enable action to be taken more expeditiously than is otherwise provided by this chapter to effectuate the policy and purposes of this chapter.

"(b) If the commission issues a temporary order under this authority without a hearing, the order shall fix a time and place for a hearing to be held before the commission, which shall be held as soon after the temporary order is issued as is practicable.

"(c) At the hearing, the commission shall affirm, modify, or set aside the temporary order. If the nature of the commission's action requires, further proceedings shall be conducted as appropriate under provisions of the Administrative Procedure and Texas Register Act (Article 6252—13a, Vernon's Texas Civil Statutes).

"(d) The requirements of Section 26.022 of this code relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to such a hearing, but such general notice of the hearing shall be given as the commission considers practicable under the circumstances.

**"Sec. 26.020. Hearing Powers**

"The commission may call and hold hearings, administer oaths, receive evidence at the hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions with respect to administering the provisions of this chapter or the rules, orders, or other actions of the commission.

**"Sec. 26.021. Delegation of Hearing Powers**

"(a) Except for those hearings required to be held before the commission under Section 26.019(b) of this code, the commission may authorize the chief hearing examiner to call and hold hearings on any subject on which the commission may hold a hearing.

"(b) The commission may also authorize the chief hearing examiner to delegate to one or more hearing examiners the authority to hold any hearing called by him.

"(c) At any hearing called by the chief hearing examiner, he or the person delegated the authority by him to hold the hearing is empowered to administer oaths and receive evidence.

"(d) The individual or individuals holding a hearing under the authority of this section shall report the hearing in the manner prescribed by the commission.

**"Sec. 26.022. Notice of Hearings; Continuance**

"(a) Except as otherwise provided in Sections 26.0191 and 26.176 of this code, the provisions of this section apply to all hearings conducted in compliance with this chapter.

"(b) Notice of the hearing shall be published at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, the commission has reason to believe persons reside who may be affected by the action that may be taken as a result of the hearing. The date of the publication shall be not less than 20 days before the date set for the hearing.

"(c) If notice of the hearing is required by this chapter to be given to a person, the notice shall be served personally or mailed not less than 20 days before the date set for the hearing to the person at his last address known to the commission. If the party is not an individual, the notice may be given to any officer, agent, or legal representative of the party.

"(d) The individual or individuals holding the hearing, called the hearing body, shall conduct the hearing at the time and place stated in the notice. The hearing body may continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing a new notice.

"(e) If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the person conducting the hearing at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed in Subsection (c) of this section at a reasonable time before the new setting, but it is not necessary to publish a newspaper notice of the new setting.

**"Sec. 26.023. Water Quality Standards**

"The board by rule shall set water quality standards for the water in the state and may amend the standards from time to time. The board has the sole and exclusive authority to set water quality standards for all water in the state.

**"Sec. 26.024. Hearings on Standards; Consultation**

"Before setting or amending water quality standards, the board shall:

"(1) hold public hearings at which any person may appear and present evidence under oath, pertinent for consideration by the board; and

"(2) consult with the executive director to insure that the proposed standards are not inconsistent with the objectives of the state water plan.

**"Sec. 26.025. Hearings on Standards: Notice to Whom**

"Notice of a hearing under Section 26.024 of this code shall be given to each of the following that the board believes may be affected:

"(1) each local government whose boundary is contiguous to the water in question or whose boundaries contain all or part of the water, or through whose boundaries the water flows;

"(2) the holders of rights to appropriate water from the water in question as shown by the records of the department; and

"(3) the holders of permits from the commission to discharge waste into or adjacent to the water in question.

**"Sec. 26.026. Standards to be Published**

"The department shall publish its water quality standards and amendments and shall make copies available to the public on written request.



**"Sec. 26.027. Commission May Issue Permits**

"(a) The commission may issue permits and amendments to permits for the discharge of waste into or adjacent to water in the state.

"(b) A person desiring to obtain a permit or to amend a permit shall submit an application to the department containing all information reasonably required by the department.

"(c) A person may not commence construction of a treatment facility until the commission has issued a permit to authorize the discharge of waste from the facility, except with the approval of the commission.

**"Sec. 26.028. Action on Application**

"(a) Except as provided in Subsection (b) of this section, a public hearing shall be held on an application for a permit or to amend a permit. Notice of the hearing shall be given to the persons who in the judgment of the commission may be affected.

"(b) An application to amend a permit to improve the quality of waste authorized to be discharged may be set for consideration and may be acted on by the commission at a regular meeting without the necessity of holding a public hearing if the applicant does not seek to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge. Notice of the application shall be mailed to the mayor and health authorities for the city or town, and the county judge and health authorities for the county, in which the waste is or will be discharged, at least 10 days before the commission meeting, and they may present information to the commission on the application.

**"Sec. 26.029. Conditions of Permit; Amendment; Revocation and Suspension**

"(a) In each permit, the commission shall prescribe the conditions on which it is issued, including:

"(1) the duration of the permit;

"(2) the location of the point of discharge of the waste;

"(3) the maximum quantity of waste that may be discharged under the permit at any time and from time to time;

"(4) the character and quality of waste that may be discharged under the permit; and

"(5) any monitoring and reporting requirements prescribed by the commission for the permittee.

"(b) After a public hearing, notice of which shall be given to the permittee, the commission may require the permittee, from time to time, for good cause, to conform to new or additional conditions. The commission shall allow the permittee a reasonable time to conform to the new or additional conditions, and on application of the permittee, the commission may grant additional time.

"(c) A permit does not become a vested right in the permittee. After a public hearing, notice of which shall be given to the permittee, the commission may revoke or suspend a permit for good cause on any of the following grounds:

"(1) the permittee has failed or is failing to comply with the conditions of the permit;

"(2) the permit is subject to cancellation or suspension under Section 26.084 of this code;

"(3) the permit or operations under the permit have been abandoned; or

"(4) the permit is no longer needed by the permittee.

“(d) The notice required by Subsections (b) and (c) of this section shall be sent to the permittee at his last known address as shown by the records of the department.

**“Sec. 26.030. Permit: Effect on Recreational Water**

“In considering the issuance of a permit to discharge effluent into any body of water having an established recreational standard, the commission shall consider any unpleasant odor quality of the effluent and the possible adverse effect that it might have on the receiving body of water, and the commission may consider the odor as one of the elements of the water quality of the effluent.

**“Sec. 26.031. Private Sewage Facilities**

“(a) As used in this section and Section 26.032 of this code, ‘private sewage facilities’ means septic tanks, pit privies, cesspools, sewage holding tanks, injection wells used to dispose of sewage, chemical toilets, treatment tanks, and all other facilities, systems, and methods used for the disposal of sewage other than disposal systems operated under a permit issued by the commission.

“(b) Whenever it appears that the use of private sewage facilities in an area is causing or may cause pollution or is injuring or may injure the public health, the commission may hold a public hearing in or near the area to determine whether an order should be entered controlling or prohibiting the installation or use of private sewage facilities in the area.

“(c) Before the commission enters its order, the executive director shall consult with the Director of Health Resources for recommendations concerning the impact of the use of private sewage facilities in the area on public health and present the recommendations at the hearing.

“(d) If the commission finds after the hearing that the use of private sewage facilities in an area is causing or may cause pollution or is injuring or may injure the public health, the commission may enter an order as it may consider appropriate to abate or prevent pollution or injury to public health.

“(e) The order may, without limitation, do one or more of the following:

“(1) limit the number and kind of private sewage facilities which may be used in the area;

“(2) prohibit the installation and use of additional private sewage facilities or kinds of private sewage facilities in the area;

“(3) require modifications or improvements to existing private sewage facilities or impose limitations on their use; and

“(4) provide for a gradual and systematic reduction of the number or kinds of private sewage facilities in the area.

“(f) The commission may provide in the order for a system of licensing of private sewage facilities in the area, including procedures for cancellation of a license for violation of this section, the license, or the orders or rules of the department. The commission may also provide in the system of licensing for periodic renewal of the licenses, but this may not be required more frequently than once a year.

“(g) The commission may delegate the licensing function and the administration of the licensing system to the executive director or to any local government whose boundaries include the area or which has been designated by the commission under Sections 26.081 through 26.086 of this code as the agency to develop a regional waste disposal system which includes the area or to any district or authority created and existing un-

der Article XVI, Section 59 or Article III, Section 52 of the Texas Constitution, which owns or operates a dam or reservoir project within the area regulated.

"(h) The board also may prescribe and require the payment of reasonable license fees by an applicant for a license, including fees for periodic renewal of a license. The board may change the amount of the license fees from time to time. The amount of the fees shall be based on the reasonable cost of performing the licensing function and administering the licensing system, including, where applicable, costs of soil percolation and other tests to determine the suitability of using a particular type or types of private sewage facilities in the area or at any location within the area, field inspections, travel, and other costs directly attributable to performing the licensing function and administering the licensing system.

"(i) If the commission or the executive director has the responsibility for performing the licensing function, the license fees shall be paid to the department. Those fees shall not be deposited in the General Revenue Fund of the state but shall be deposited in a special fund for use by the department in performing the licensing function and administering the licensing system, and the fees so deposited are hereby appropriated to the department to use for those purposes only.

"(j) If a local government has the responsibility for performing the licensing function, the fees shall be paid to the local government.

**"Sec. 26.032. Control by Counties**

"(a) Whenever it appears to the commissioners court of any county that the use of private sewage facilities in an area within the county is causing or may cause pollution or is injuring or may injure the public health, the county may proceed in the same manner and in accordance with the same procedures as the commission to hold a public hearing and enter an order, resolution, or other rule as it may consider appropriate to abate or prevent pollution or injury to public health.

"(b) The order, resolution, or other rule may provide the same restrictions and requirements as are authorized for an order of the commission entered under this section.

"(c) Before the order, resolution, or other rule becomes effective, the county shall submit it to the commission and obtain the commission's written approval.

"(d) In the event of any conflict within an area between an order adopted by the commission and an order, resolution, or other rule adopted by a county under this section, the order of the commission shall take precedence.

"(e) Where a system of licensing has been ordered by the commission or the commissioners court of a county, no person may install or use private sewage facilities required to be licensed without obtaining a license.

**"Sec. 26.033. Rating of Waste Disposal Systems**

"(a) After consultation with the Texas Department of Health Resources, the board shall provide by rule for a system of approved ratings for municipal waste disposal systems and other waste disposal systems which the board may designate.

"(b) The owner or operator of a municipal waste disposal system which attains an approved rating has the privilege of erecting signs of a design approved by the board on highways approaching or inside the boundaries of the municipality, subject to reasonable restrictions and re-

quirements which may be established by the State Department of Highways and Public Transportation.

“(c) In addition, the owner or operator of any waste disposal system, including a municipal system, which attains an approved rating has the privilege of erecting signs of a design approved by the board at locations which may be approved or established by the board, subject to such reasonable restrictions and requirements which may be imposed by any governmental entity having jurisdiction.

“(d) If the waste disposal system fails to continue to achieve an approved rating, the commission may revoke the privilege. On due notice from the commission, the owner or operator of the system shall remove the signs.

**“Sec. 26.034. Approval of Disposal System Plans**

“(a) This section applies to all sewer systems, treatment facilities, and disposal systems, except those public sewage disposal systems for which plans are subject to review and approval by the Texas Department of Health Resources.

“(b) Before beginning construction, every person who proposes to construct or materially alter the efficiency of any sewer system, treatment facility, or disposal system to which this section applies shall submit completed plans and specifications to and obtain the approval of the plans by the board.

“(c) The board shall approve the plans and specifications if they conform to the waste discharge requirements and water quality standards established by the commission and the board respectively.

**“Sec. 26.035. Federal Grants**

“The executive director with the approval of the board may execute agreements with the United States Environmental Protection Agency or any other federal agency that administers programs providing federal cooperation, assistance, grants, or loans for research, development, investigation, training, planning, studies, programming, and construction related to methods, procedures, and facilities for the collection, treatment, and disposal of waste or other water quality control activities. The department may accept federal funds for these purposes and for other purposes consistent with the objectives of this chapter and may use the funds as prescribed by law or as provided by agreement.

**“Sec. 26.036. Water Quality Management Plans**

“(a) The executive director shall develop and prepare, and from time to time revise, comprehensive water quality management plans for the different areas of the state, as designated by the board.

“(b) The executive director may contract with local governments, regional planning commissions, planning agencies, other state agencies, colleges and universities in the state, and any other qualified and competent person to assist the department in developing and preparing, and from time to time revising, water quality management plans for areas designated by the board.

“(c) With funds provided for the purpose by legislative appropriation, the board may make grants or interest-free loans to, or contract with, local governments, regional planning commissions, and planning agencies to pay administrative and other expenses of such entities for developing and preparing, and from time to time revising, water quality management plans for areas designated by the board. The period of time for which funding under this provision may be provided for developing

and preparing or for revising a plan may not exceed three consecutive years in each instance. Any loan made pursuant to this subsection shall be repaid when the construction of any project included in the plan is begun.

“(d) Any person developing or revising a plan shall, during the course of the work, consult with the department and with local governments and other federal, state, and local governmental agencies which in the judgment of the executive director may be affected by or have a legitimate interest in the plan.

“(e) Insofar as may be practical, the water quality management plans shall be reasonably compatible with the other governmental plans for the area, such as area or regional transportation, public utility, zoning, public education, recreation, housing, and other related development plans.

**“Sec. 26.037. Approval of Plans**

“(a) After a water quality management plan has been prepared or significantly revised as authorized in Section 26.036 of this code, it shall be submitted to the board and to such local governments and other federal, state, and local governmental agencies as in the judgment of the executive director may be affected by or have a legitimate interest in the plan.

“(b) After a reasonable period of time as determined by the board for the persons to whom the plan was submitted to review and consult on the plan, a public hearing shall be held on whether the plan should be approved or whether the plan should be modified in any way. Notice of the hearing shall be given to the person or persons who prepared or revised the plan and to the persons to whom the plan was submitted for review.

“(c) After the public hearing if the board finds that the plan complies with the policy and purpose of this chapter and the rules and policies of the board, it shall approve the plan. If the board does not so find, it may disapprove the plan, modify the plan as necessary so that it will comply, or return it for further development and later resubmission to the board, in accordance with the procedure in Section 26.036 of this code.

“(d) When a water quality management plan has been approved as provided in this section, the plan may be furnished to the Federal Environmental Protection Agency, the Federal Water Quality Administration, or any other federal official or agency in fulfillment of any federal water quality management planning requirement specified for any purpose by the federal government.

“(e) The board and the commission may use an approved water quality management plan or a plan in progress but not completed or approved in reviewing and making determinations on applications for permits and on applications for financial assistance for construction of treatment works.

**“Sec. 26.038. Fiscal Control on Water Quality Management Planning**

“In administering the program for making grants and loans to and contracting with local governments, regional planning commissions, and planning agencies as authorized in Subsection (c) of Section 26.036 of this code, the board shall adopt rules and procedures for the necessary engineering review and supervision, fiscal control, and fund accounting. The fiscal control and fund accounting procedures are supplemental to other procedures prescribed by law.

**"Sec. 26.039. Accidental Discharges and Spills**

"(a) As used in this section:

"(1) 'Accidental discharge' means an act or omission through which waste or other substances are inadvertently discharged into water in the state.

"(2) 'Spill' means an act or omission through which waste or other substances are deposited where, unless controlled or removed, they will drain, seep, run, or otherwise enter water in the state.

"(3) 'Other substances' means substances which may be useful or valuable and therefore are not ordinarily considered to be waste, but which will cause pollution if discharged into water in the state.

"(b) Whenever an accidental discharge or spill occurs at or from any activity or facility which causes or may cause pollution, the individual operating, in charge of, or responsible for the activity or facility shall notify the department as soon as possible and not later than 24 hours after the occurrence.

"(c) Activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the board may adopt or issue. The safety and preventive measures which may be required shall be commensurate with the potential harm which could result from the escape of the waste or other substances.

"(d) The provisions of this section are cumulative of the other provisions in this chapter relating to waste discharges, and nothing in this section exempts any person from complying with or being subject to any other provision of this chapter.

**"Sec. 26.040. Control of Certain Waste Discharges by Rule**

"Whenever the board determines that the quality of water in an area is adversely affected or threatened by the combined effects of several relatively small-quantity discharges of wastes being made for which it is not practical to issue individual permits or that the general nature of a particular type of activity which produces a waste discharge is such that requiring individual permits is unnecessarily burdensome both to the waste discharger and the department, the board may by rule regulate and set the requirements and conditions for the discharges of waste.

**"Sec. 26.041. Health Hazards**

"The department may use any means provided by this chapter to prevent a discharge of waste that is injurious to public health.

**"Sec. 26.042. Monitoring and Reporting**

"The board may prescribe reasonable requirements for a person making waste discharges to monitor and report on his waste collection, treatment, and disposal activities. When in the judgment of the commission significant water quality management benefits will result or water quality management needs justify, the commission may also prescribe reasonable requirements for any person or persons making waste discharges to monitor and report on the quality of any water in the state which the commission has reason to believe may be materially affected by the waste discharges.

**"Sec. 26.043. The State of Texas Water Pollution Control Compact**

"(a) The legislature recognizes that various river authorities and municipal water districts and authorities of the state have signed, and that others are authorized to sign and may sign, a document entitled 'The State of Texas Water Pollution Control Compact' (hereinafter called the

'compact'), which was approved by Order of the Texas Water Quality Board on March 26, 1971, and which is now on file in the official records of the department, wherein each of the signatories is by law an official agency of the state, created pursuant to Article XVI, Section 59 of the Texas Constitution and operating on a multiple county or regional basis, and that collectively those signatories constitute an agency of the state authorized to agree to pay, and to pay, for and on behalf of the state not less than 25 percent of the estimated costs of all water pollution control projects in the state, wherever located, for which federal grants are to be made pursuant to Clause (7), Subsection (b), Section 1158, Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1158), or any similar law, in accordance with and subject to the terms and conditions of the compact. The compact provides a method for taking advantage of increased federal grants for water pollution control projects by virtue of the state payment which will be made from the proceeds from the sale of bonds by the signatories to the compact. The compact is hereby ratified and approved, and it is hereby provided that Section 30.026 of this code shall not constitute a limitation or restriction on any signatory with respect to any contract entered into pursuant to the compact or with respect to any water pollution control project in the state, wherever located, for which the aforesaid federal grants are to be made, and such signatory shall not be required to obtain the consent of any other river authority or conservation and reclamation district which is not a signatory with respect to any such contract or project. Each signatory to the compact is empowered and authorized to do any and all things and to take any and all action and to execute any and all contracts and documents which are necessary or convenient in carrying out the purposes and objectives of the compact and issuing bonds pursuant thereto, with reference to any water pollution control project in the state, wherever located, for which the aforesaid federal grants are to be made.

"(b) It is further found, determined, and enacted that all bonds issued pursuant to said compact and all bonds issued to refund or refinance same are and will be for water quality enhancement purposes, within the meaning of Article III, Section 49-d-1, as amended, of the Texas Constitution and any and all bonds issued by a signatory to said compact to pay for all or any part of a project pursuant to the compact and any bonds issued to refund or refinance any such bonds may be purchased by the Texas Water Development Board with money received from the sale of Texas Water Development Board bonds pursuant to said Article III, Section 49-d-1, as amended, of the Texas Constitution. The bonds or refunding bonds shall be purchased directly from any such signatory at such price as is necessary to provide the state payment and any other part of the cost of the project or necessary to accomplish the refunding, and all purchases shall constitute loans for water quality enhancement. The bonds or refunding bonds shall have the characteristics and be issued on such terms and conditions as are acceptable to the board. The proceeds received by any such signatory from the sale of any such bonds shall be used to provide the state payment pursuant to the compact and any other part of the cost of the project, and the proceeds from the sale of any such refunding bonds to refund any outstanding bonds issued pursuant to the compact shall be used to pay off and retire the bonds being refunded thereby.

"(c) This subsection is not intended to interfere in any way with the operation of Article III, Section 49-d-1, as amended, of the Texas Consti-

tution or the enabling legislation enacted pursuant thereto, and the afore-said compact shall constitute merely a complementary or supplemental method for providing the state payment solely in instances that it is deemed necessary or advisable by the board.

**"Sec. 26.044. Disposal of Boat Sewage**

"(a) As used in this section, 'boat' means any vessel or other watercraft, whether moved by oars, paddles, sails, or other power mechanism, inboard or outboard, or any other vessel or structure floating on water in this state, whether or not capable of self-locomotion, including but not limited to cabin cruisers, houseboats, barges, marinas, and similar floating objects.

"(b) The board shall issue rules concerning the disposal of sewage from boats located or operated on inland fresh waters in this state. The rules of the board shall include but not be limited to provisions for the establishment of standards for sewage disposal devices, the certification of sewage disposal devices, including on-shore pump-out facilities, and the visible and conspicuous display of evidence of certification of sewage disposal devices on each boat equipped with such device and on each on-shore pump-out device.

"(c) The board may delegate the administration and performance of the certification function to the executive director or to any other governmental entity. The board may prescribe and require the payment, by applicants for certification, of reasonable fees based on the costs of administering and performing the certification function. All certification fees shall be paid to the entity performing the certification function. All fees collected by any state agency shall be deposited in a special fund for use by that agency in administering and performing the certification function and shall not be deposited in the General Revenue Fund of the state.

"(d) Before issuing any rules under Subsection (b) of this section, the board or any person authorized by it under Section 26.021 of this code shall hold hearings thereon in Austin and in five other locations in the state in order to provide the best opportunity for all citizens of the state to appear and present evidence to the board.

"(e) Notice of the hearing in Austin shall be published at least once in one or more newspapers having general circulation in the state. Notice of each of the other hearings shall be published at least once in one or more newspapers having general circulation in the region in which each hearing is to be held.

"(f) Copies of each rule issued by the board under this section shall be filed in the offices of the department in Austin, Texas, in the office of the Secretary of State in Austin, and the office of the county clerk in each county in the state. The board shall provide for publication of notice of each rule issued under this section in at least one newspaper of general circulation in each county of the state and shall furnish the county judge of each county of the state a copy of the rules.

**"Sec. 26.045. Pump-Out Facilities for Boat Sewage**

"(a) In this section:

"(1) 'Boat' means the same as defined in Section 26.044(a), Water Code.

"(2) 'Boat pump-out station' means any private or public shore-side installation either independent of or in addition to an organized waste collection, treatment, and disposal system used to receive boat sewage.



“(3) ‘Shoreside installation’ means marinas and other installations servicing boats on fresh water of Texas.

“(4) ‘Fresh water’ means as geographically applied all of the surface lakes, streams, and reservoirs of the state, exclusive of the extent of ordinary tidal action on this water.

“(b) After a public hearing and after making every reasonable effort to bring about the establishment of an adequate number of boat pump-out stations on fresh water, the commission may enter an order requiring the establishment of boat pump-out stations by a local government that has any jurisdiction over at least a portion of the fresh water or over land immediately adjacent to the fresh water.

“(c) If a local government is authorized to issue authorization for the operation of shoreside installations, the local government may require the installation and operation of boat pump-out stations where necessary. The local government shall require the installation and operation of boat pump-out stations if required by the commission.

“(d) A local government responsible for establishing boat pump-out stations may issue bonds or may use general revenue funds from normal operations to finance the construction and operation of the pump-out facilities. Pump-out stations established as a result of this section will be self-sustaining with respect to costs and revenues collected from users of said facilities, and local governments are authorized to levy reasonable, appropriate charges or fees to recover cost of installation and operation of the pump-out stations. Nothing in this section is to be construed to require any local government to rebate to the State of Texas funds collected pursuant to this program.

“(e) The hearings required by this section and other acts of the commission in carrying out the provisions of this section shall be handled as provided in the rules of the board.

**“Sec. 26.046. Hearings on Protection of Edwards Aquifer From Pollution**

“(a) As used in this section, ‘Edwards Aquifer’ means that portion of an arcuate belt of porous, waterbearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Kendall, Comal, and Hays counties, respectively, and as defined in the most recent order of the commission for the protection of the quality of the potable underground water in those counties.

“(b) Annually, the commission shall hold a public hearing in Kinney, Uvalde, Medina, Bexar, Kendall, Comal, or Hays County, and a hearing in any other of those counties whose commissioners court requests that a hearing be held in its county, to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution.

“(1) Notice of the public hearing shall be given and the hearing shall be conducted in accordance with the rules of the commission.

“(2) The hearings examiner, appointed by the commission, shall convene the public hearing at an hour convenient for the public to attend, but not later than 10 a. m. of the day set for the public hearing and shall close the public hearing no later than 6 p. m. of the same day.

“[Sections 26.047–26.080 reserved for expansion]

**"SUBCHAPTER C. REGIONAL AND AREA-WIDE SYSTEMS****"Sec. 26.081. Regional or Area-Wide Systems; General Policy**

"(a) The legislature finds and declares that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.

"(b) Within any standard metropolitan statistical area in the state, the department is authorized to implement this policy in the manner and in accordance with the procedure provided in Sections 26.081 through 26.086 of this code.

"(c) In those portions of the state which are not within a standard metropolitan statistical area, the department shall observe this state policy by encouraging interested and affected persons to cooperate in developing and using regional and area-wide systems. The department may not use the procedure specified in Sections 26.081 through 26.086 of this code in these areas to implement this policy. However, this does not affect or diminish any authority which the department may otherwise have and exercise under other provisions of this chapter.

"(d) The term 'standard metropolitan statistical area,' as used in this section, means an area consisting of a county or one or more contiguous counties which is officially designated as such by the United States Office of Management and Budget or its successor in this function.

**"Sec. 26.082. Hearing to Define Area of Regional or Area-Wide Systems**

"(a) Whenever it appears to the board that because of the existing or reasonably foreseeable residential, commercial, industrial, recreational, or other economic development in an area a regional or area-wide waste collection, treatment, or disposal system or systems are necessary to prevent pollution or maintain and enhance the quality of the water in the state, the board may hold a public hearing in or near the area to determine whether the policy stated in Section 26.081 of this code should be implemented in that area.

"(b) Notice of the hearing shall be given to the local governments which in the judgment of the board may be affected.

"(c) If after the hearing the board finds that a regional or area-wide system or systems are necessary or desirable to prevent pollution or maintain and enhance the quality of the water in the state, the board may enter an order defining the area in which such a system or systems are necessary or desirable.

**"Sec. 26.083. Hearing to Designate Systems to Serve the Area Defined; Order; Etc.**

"(a) At the hearing held under Section 26.082 of this code or at a subsequent hearing held in or near an area defined under Section 26.082 of this code, the board may consider whether to designate the person to provide a regional or area-wide system or systems to serve all or part of the waste collection, treatment, or disposal needs of the area defined.

"(b) Notice of the hearing shall be given to the local governments and to owners and operators of any waste collection, treatment, and disposal systems who in the judgment of the board may be affected.

“(c) If after the hearing the board finds that there is an existing or proposed system or systems then capable or which in the reasonably foreseeable future will be capable of serving the waste collection, treatment, or disposal needs of all or part of the area defined and that the owners or operators of the system or systems are agreeable to providing the services, the board may enter an order designating the person to provide the waste collection, treatment, or disposal system or systems to serve all or part of the area defined.

**“Sec. 26.084. Actions Available to Commission After Designations of Systems**

“(a) After the board has entered an order as authorized in Section 26.083 of this code, the commission may, after public hearing and after giving notice of the hearing to the persons who in the judgment of the commission may be affected, take any one or more of the following actions:

“(1) enter an order requiring any person discharging or proposing to discharge waste into or adjacent to the water in the state in an area defined in an order entered under Section 26.082 of this code to use a regional or area-wide system designated under Section 26.083 of this code for the disposal of his waste;

“(2) refuse to grant any permits for the discharge of waste or to approve any plans for the construction or material alteration of any sewer system, treatment facility, or disposal system in an area defined in an order entered under Section 26.082 of this code unless the permits or plans comply and are consistent with any orders entered under Sections 26.081 through 26.086 of this code; or

“(3) cancel or suspend any permit, or amend any permit in any particular, which authorizes the discharge of waste in an area defined in an order entered under Section 26.082 of this code.

“(b) Before exercising the authority granted in this section, the commission shall find affirmatively:

“(1) that there is an existing or proposed regional or area-wide system designated under Section 26.083 of this code which is capable or which in the reasonably foreseeable future will be capable of serving the waste collection, treatment, or disposal needs of the person or persons who are the subject of an action taken by the commission under this section;

“(2) that the owner or operator of the designated regional or area-wide system is agreeable to providing the service;

“(3) that it is feasible for the service to be provided on the basis of waste collection, treatment, and disposal technology, engineering, financial, and related considerations existing at the time, exclusive of any loss of revenue from any existing or proposed waste collection, treatment, or disposal systems in which the person or persons who are the subject of an action taken under this section have an interest; and

“(4) that inclusion of the person or persons who are the subject of an action taken by the commission under this section will not suffer undue financial hardship as a result of inclusion in a regional or area-wide system.

“(A) An action taken by the commission under Section 26.085 of this code, excluding any person or persons from a regional or area-wide system because the person or persons will suffer undue financial hardship as a result of inclusion in the

regional or area-wide system, shall be subject to a review at a later time determined by the commission in accordance with the criteria set out in this section, not to exceed three years from the date of exclusion.

“(B) If a person or persons excluded from a regional or area-wide system fail to operate the excluded facilities in a manner that will comply with its permits, the permits shall be subject to cancellation after review by the commission, and the facilities may become a part of the regional or area-wide system.

**“Sec. 26.085. Inclusion at a Later Time**

“Any person or persons who are the subject of an action taken by the commission under Section 26.084 of this code and who are excluded from a regional or area-wide system because the person or persons will suffer undue financial hardship as a result of inclusion in the regional or area-wide system may be added to the system at a later time under the provisions of Section 26.084 of this code.

**“Sec. 26.086. Rates for Services by Designated Systems**

“(a) On motion of any interested party and after a public hearing, the commission may set reasonable rates for the furnishing of waste collection, treatment, or disposal services to any person by a regional or area-wide system designated under Section 26.083 of this code.

“(b) Notice of the hearing shall be given to the owner or operator of the designated regional or area-wide system, the person requesting the hearing, and any other person who in the judgment of the commission may be affected by the action taken by the commission as a result of the hearing.

“(c) After the hearing, the commission shall enter an order setting forth its findings and the rates which may be charged for the services by the owner or operator of the designated regional or area-wide system.

“[Sections 26.087–26.120 reserved for expansion]

**“SUBCHAPTER D. PROHIBITION AGAINST  
POLLUTION; ENFORCEMENT**

**“Sec. 26.121. Unauthorized Discharges Prohibited**

“(a) Except as authorized by a rule, permit, or order issued by the department, no person may:

“(1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state;

“(2) discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state; or

“(3) commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land Office, or the Railroad Commission of Texas, in which case this subdivision does not apply.

“(b) In the enforcement of Subdivisions (2) and (3) of Subsection (a) of this section, consideration shall be given to the state of existing

technology, economic feasibility, and the water quality needs of the water that might be affected.

“(c) No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any rule, permit, or order of the department.

**“Sec. 26.122. Civil Penalty**

“A person who violates any provision of this chapter or any rule, permit, or order of the department is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation to be recovered as provided in this subchapter.

**“Sec. 26.123. Enforcement by Department**

“(a) Whenever it appears that a person has violated or is violating or is threatening to violate any provision of this chapter or any rule, permit, or order of the department, then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

“(b) On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule, permit, or order of the department, the district court shall grant the injunctive relief the facts may warrant.

“(c) At the request of the executive director, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty as authorized in Subsection (a) of this section.

**“Sec. 26.124. Enforcement by Others**

“(a) Whenever it appears that a violation or threat of violation of any provision of Section 26.121 of this code or any rule, permit, or order of the department has occurred or is occurring within the jurisdiction of a local government, exclusive of its extraterritorial jurisdiction, the local government, in the same manner as the department, may have a suit instituted in a district court through its own attorney for the injunctive relief or civil penalties or both, as authorized in Subsection (a) of Section 26.123 of this code, against the person who committed or is committing or threatening to commit the violation. This power may not be exercised by a local government unless its governing body adopts a resolution authorizing the exercise of the power. In a suit brought by a local government under this section, the department is a necessary and indispensable party.

“(b) Whenever it appears that a violation or a threat of violation of any provision of Section 26.121 of this code or any rule, permit, or order of the department has occurred or is occurring that affects aquatic life or wildlife, the Parks and Wildlife Department, in the same manner as the department, may have a suit instituted in a district court for injunctive relief or civil penalties or both, as authorized in Section 26.123(a) of this code, against the person who committed or is committing or is threatening to commit the violation. The suit shall be brought in the name of the State of Texas through the county attorney or the district attorney, as appropriate, of the county where the defendant resides or in the county where the violation or threat of violation occurs.

**“Sec. 26.125. Venue and Procedure**

“(a) A suit for injunctive relief or recovery of a civil penalty or for both injunctive relief and penalty may be brought either in the county in

which the defendant resides or in the county in which the violation or threat of violation occurs.

"(b) In any suit brought to enjoin a violation or threat of violation of this chapter or any rule, permit, or order of the department, the court may grant the department, the Parks and Wildlife Department, or the local government, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders, after notice and hearing temporary injunctions, and permanent injunctions.

"(c) A suit brought under this chapter shall be given precedence over all other cases of a different nature on the docket of the trial or appellate court.

"(d) Either party may appeal from a final judgment of the court as in other civil cases.

**"Sec. 26.126. Disposition of Civil Penalties**

"(a) All civil penalties recovered in suits instituted by the State of Texas under this chapter through the department or the Parks and Wildlife Department shall be paid to the General Revenue Fund of the State of Texas.

"(b) All civil penalties recovered in suits instituted by a local government or governments under this chapter shall be equally divided between the State of Texas and the local government or governments first instituting the suit, with 50 percent of the recovery to be paid to the General Revenue Fund of the State of Texas and the other 50 percent paid equally to the local government or governments first instituting the suit.

**"Sec. 26.127. Department as Principal Authority**

"The department is the principal authority in the state on matters relating to the quality of the water in the state. The executive director has the responsibility for establishing a water quality sampling and monitoring program for the state. All other state agencies engaged in water quality or water pollution control activities shall coordinate those activities with the department.

**"Sec. 26.128. Groundwater Quality**

"The executive director shall have investigated all matters concerning the quality of groundwater in the state.

**"Sec. 26.129. Duty of Parks and Wildlife Department**

"The Parks and Wildlife Department and its authorized employees shall enforce the provisions of this chapter to the extent that any violation affects aquatic life and wildlife as provided in Section 26.124(b) of this code.

**"Sec. 26.130. Duty of Department of Health Resources**

"The Texas Department of Health Resources shall continue to apply the authority vested in it by Chapter 178, Acts of the 49th Legislature, 1945, as amended (Article 4477—1, Vernon's Texas Civil Statutes), in the abatement of nuisances resulting from pollution not otherwise covered by this chapter. The Texas Department of Health Resources shall investigate and make recommendations to the department concerning the health aspects of matters related to the quality of the water in the state.

**"Sec. 26.131. Duties of Railroad Commission**

"The Railroad Commission of Texas is solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from activities associated with the exploration, development, and production of oil or gas. The Railroad Commission of Texas may issue permits for the discharge of

waste resulting from these activities, and discharge of waste into water in this state resulting from these activities shall meet the water quality standards established by the board.

**"Sec. 26.132. Act of God, War, Etc.**

"Any pollution, or any discharge of waste without a permit or in violation of a permit, caused by an act of God, war, strike, riot, or other catastrophe is not a violation of this chapter.

**"Sec. 26.133. Effect on Private Remedies**

"Nothing in this chapter affects the right of any private corporation or individual to pursue any available common-law remedy to abate a condition of pollution or other nuisance or to recover damages.

**"Sec. 26.134. Secret Processes, Etc.**

"Nothing in this chapter requires any person to disclose any classified data of the federal government or any confidential information relating to secret processes or economics of operation.

**"Sec. 26.135. Effect on Other Laws**

"(a) Nothing in this chapter affects the powers and duties of the department and the Railroad Commission of Texas with respect to injection wells as provided in Chapter 27 of this code.

"(b) The department and the Water Well Drillers Board shall continue to exercise the authority granted to them in The Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas Civil Statutes).

"[Sections 26.136–26.170 reserved for expansion]

**"SUBCHAPTER E. AUTHORITY OF LOCAL GOVERNMENTS**

**"Sec. 26.171. Inspection of Public Water**

"A local government may inspect the public water in its area and determine whether or not:

"(1) the quality of the water meets the state water quality standards adopted by the board;

"(2) persons discharging effluent into the public water located in the areas of which the local government has jurisdiction have obtained permits for discharge of the effluent; and

"(3) persons who have permits are making discharges in compliance with the requirements of the permits.

**"Sec. 26.172. Recommendations to Board**

"A local government may make written recommendations to the board as to what in its judgment the water quality standards should be for any public water within its territorial jurisdiction.

**"Sec. 26.173. Power to Enter Property**

"(a) A local government has the same power as the department has under Section 26.014 of this code to enter public and private property within its territorial jurisdiction to make inspections and investigations of conditions relating to water quality. The local government in exercising this power is subject to the same provisions and restrictions as the department.

"(b) When requested by the executive director, the result of any inspection or investigation made by the local government shall be transmitted to the department for its consideration.

**"Sec. 26.174. Enforcement Action**

"A local government may bring an enforcement action under this chapter in the manner provided in Subchapter D of this chapter for local governments.

**"Sec. 26.175. Cooperative Agreements**

"(a) A local government may execute cooperative agreements with the department or other local governments:

"(1) to provide for the performance of water quality management, inspection, and enforcement functions and to provide technical aid and educational services to any party to the agreement; and

"(2) for the transfer of money or property from any party to the agreement to another party to the agreement for the purpose of water quality management, inspection, enforcement, technical aid and education, and the construction, ownership, purchase, maintenance, and operation of disposal systems.

"(b) When in the opinion of the executive director it would facilitate and enhance the performance by a local government of its water quality management, inspection, and enforcement functions pursuant to a cooperative agreement between the local government and the department as authorized in Subsection (a) of this section, the executive director may assign and delegate to the local government during the period of the agreement such of the pertinent powers and functions vested in the department under this chapter as in the judgment of the executive director may be necessary or helpful to the local government in performing those management, inspection, and enforcement functions.

"(c) At any time and from time to time prior to the termination of the cooperative agreement, the executive director may modify or rescind any such assignment or delegation.

"(d) The executive director shall notify immediately a local government to whom it assigns or delegates any powers and functions pursuant to Subsections (b) and (c) of this section or as to when it modifies or rescinds any such assignment or delegation.

**"Sec. 26.176. Disposal System Rules**

"(a) Every local government which owns or operates a disposal system is empowered to and shall, except as authorized in Subsection (c) of this section, enact and enforce rules, ordinances, orders, or resolutions, referred to in this section as rules, to control and regulate the type, character, and quality of waste which may be discharged to the disposal system and, where necessary, to require pretreatment of waste to be discharged to the system, so as to protect the health and safety of personnel maintaining and operating the disposal system and to prevent unreasonable adverse effects on the disposal system.

"(b) The local government in its rules may establish the charges and assessments which may be made to and collected from all persons who discharge waste to the disposal system or who have conduits or other facilities for discharging waste connected to the disposal system, referred to in this subsection as 'users.' The charges and assessments shall be equitable as between all users and shall correspond as near as can be practically determined to the cost of making the waste disposal services available to all users and of treating the waste of each user or class of users. The charges and assessments may include user charges, connection fees, or any other methods of obtaining revenue from the disposal system available to the local government. In establishing the charges and assessments, the local government shall take into account:

"(1) the volume, type, character, and quality of the waste of each user or class of users;

"(2) the techniques of treatment required;



"(3) any capital costs and debt retirement expenses of the disposal system required to be paid for from the charges and assessments;

"(4) the costs of operating and maintaining the system to comply with this chapter and the permits, rules, and orders of the department; and

"(5) any other costs directly attributable to providing the waste disposal service under standard, accepted cost-accounting practices.

"(c) A local government may apply to the commission for an exception from the requirements of Subsections (a) and (b) of this section or for a modification of those requirements. The application shall contain the exception or modifications desired, the reasons the exception or modifications are needed, and the grounds authorized in this subsection on which the commission should grant the application. A public hearing on the application shall be held in or near the territorial area of the local government, and notice of the hearing shall be given to the local government. If after the hearing the commission in its judgment determines that the volume, type, character, and quality of the waste of the users of the system or of a particular user or class of users of the system do not warrant the enactment and enforcement of rules containing the requirements prescribed in Subsections (a) and (b) of this section or that the enactment and enforcement of the rules would be impractical or unreasonably burdensome on the local government in relation to the public benefit to be derived, then the commission in its discretion may enter an order granting an exception to those requirements or modifying those requirements in any particular in response to circumstances shown to exist.

"(d) At any time and from time to time as circumstances may require, the commission may amend or revoke any order it enters pursuant to Subsection (c) of this section. Before the commission amends or revokes such an order, a public hearing shall be held in or near the territorial area of the local government in question, and notice of the hearing shall be given to the local government. If after the hearing the commission in its judgment determines that the circumstances on which it based the order have changed significantly or no longer exist, the commission may revoke the order or amend it in any particular in response to the circumstances then shown to exist.

"(e) In the event of any conflict between the provisions of this section and any other laws or parts of laws, the provisions of this section shall control.

**"Sec. 26.177. Water Pollution Control Duties of Cities**

"(a) Every city in this state having a population of 5,000 or more inhabitants shall, and any city of this state may, establish a water pollution control and abatement program for the city. The city shall employ or retain an adequate number of personnel on either a part-time or full-time basis as the needs and circumstances of the city may require, who by virtue of their training or experience are qualified to perform the water pollution control and abatement functions required to enable the city to carry out its duties and responsibilities under this section.

"(b) The water pollution control and abatement program of a city shall encompass the entire city and may include areas within its extraterritorial jurisdiction which in the judgment of the city should be included to enable the city to achieve the objectives of the city for the area within its territorial jurisdiction. The city shall include in the program the services and functions which, in the judgment of the city or as may be reasonably required by the commission, will provide effective water pol-

lution control and abatement for the city, including the following services and functions:

“(1) the development and maintenance of an inventory of all significant waste discharges into or adjacent to the water within the city and, where the city so elects, within the extraterritorial jurisdiction of the city, without regard to whether or not the discharges are authorized by the department;

“(2) the regular monitoring of all significant waste discharges included in the inventory prepared pursuant to Subdivision (1) of this subsection;

“(3) the collecting of samples and the conducting of periodic inspections and tests of the waste discharges being monitored to determine whether the discharges are being conducted in compliance with this chapter and any applicable permits, orders, or rules of the department, and whether they should be covered by a permit from the commission;

“(4) in cooperation with the department, a procedure for obtaining compliance by the waste dischargers being monitored, including where necessary the use of legal enforcement proceedings; and

“(5) the development and execution of reasonable and realistic plans for controlling and abating pollution or potential pollution resulting from generalized discharges of waste which are not traceable to a specific source, such as storm sewer discharges and urban runoff from rainwater.

“[Sections 26.178–26.210 reserved for expansion]

#### “SUBCHAPTER F. CRIMINAL PROSECUTION

##### “Sec. 26.211. Definitions

“As used in this subchapter:

“(1) ‘Water’ includes both surface and subsurface water, and ‘water in the state’ means any water within the jurisdiction of the state.

“(2) ‘Water pollution’ means the alteration of the physical, chemical, or biological quality of, or the contamination of, any of the water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or public enjoyment of the water for any lawful or reasonable purpose.

“(3) ‘Person’ means an individual or private corporation.

“(4) ‘Waste’ means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste defined in this section.

“(5) ‘Sewage’ means waterborne human or animal wastes from residences, buildings, industrial establishments, cities, towns, or other places together with groundwater infiltration and surface water with which it is commingled.

“(6) ‘Municipal waste’ means waterborne liquid, gaseous, solid, or other waste substances or a combination of these that result from any discharge arising within or emanating from, or subject to the control of, any municipal corporation, city, town, village, or municipality.

“(7) ‘Recreational waste’ means waterborne liquid, gaseous, solid, or other waste substances or a combination of these that arise with-

in or emanate from any public or private park, beach, or recreational area.

"(8) 'Agricultural waste' means waterborne liquid, gaseous, solid, or other waste substances that arise from any type of public or private agricultural activity, including poisons and insecticides used in agricultural activities.

"(9) 'Industrial waste' means waterborne liquid, gaseous, solid, or other waste substances or a combination of these that result from any process of industry, manufacturing, trade, or business.

"(10) 'Other waste' means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dye-stuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste that may cause the quality of water in the state to be impaired.

"(11) 'To discharge' includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of.

**"Sec. 26.212. Criminal Offense**

"(a) No person may discharge or cause or permit the discharge of any waste into or adjacent to any water in the state which causes or which will cause water pollution unless the waste is discharged in compliance with a permit or order issued by the department or the Railroad Commission of Texas.

"(b) No person to whom the commission has issued a permit or other order authorizing the discharge of any waste at a particular location may discharge or cause or permit the discharge of the waste in violation of the requirements of the permit or order.

**"Sec. 26.213. Criminal Penalty**

"A person who violates the provisions of Section 26.212 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$1,000. Each day that a violation occurs constitutes a separate offense.

**"Sec. 26.214. Criminal Penalty for Violation of Private Sewage Facility Order**

"(a) A person who violates any order entered by the commission under Section 26.031 of this code or adopted by a county under Section 26.032 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each day that a violation occurs constitutes a separate offense.

"(b) Jurisdiction for prosecution of a suit under this section is in the justice of the peace courts.

"(c) Venue for prosecution of a suit under this section is in the justice of the peace precinct in which the violation is alleged to have occurred.

**"Sec. 26.215. Peace Officers**

"For purposes of this subchapter, the authorized agents and employees of the Parks and Wildlife Department are constituted peace officers. These agents and employees are empowered to enforce the provisions of this subchapter the same as any other peace officer, and for such purpose shall have the powers and duties of peace officers as set forth in the Code of Criminal Procedure, 1965, as amended.

**"Sec. 26.216. Act of God, War, Etc.**

"Any waste discharge otherwise punishable under this subchapter which is caused by an act of God, war, riot, or other catastrophe is not a violation of this subchapter.

**"Sec. 26.217. Venue**

"Venue for prosecution of any alleged violation is in the county court, the county criminal court, or the county court at law of the county in which the violation is alleged to have occurred.

**"Sec. 26.218. Allegations**

"In alleging the name of a defendant private corporation, it is sufficient to state in the complaint, indictment, or information the corporate name or to state any name or designation by which the corporation is known or may be identified. It is not necessary to allege that the defendant was lawfully incorporated.

**"Sec. 26.219. Summons and Arrest**

"(a) After a complaint is filed or an indictment or information presented against a private corporation under the provisions of this subchapter, the court or clerk shall issue a summons to the corporation. The summons shall be in the same form as a *capias* except that:

"(1) it shall summon the corporation to appear before the court named at the place stated in the summons;

"(2) it shall be accompanied by a certified copy of the complaint, indictment, or information; and

"(3) it shall provide that the corporation appear before the court named at or before 10 a. m. of the Monday next after the expiration of 20 days after it is served with summons, except when service is made upon the Secretary of State, in which instance the summons shall provide that the corporation appear before the court named at or before 10 a. m. of the Monday next after the expiration of 30 days after the Secretary of State is served with summons.

"(b) No individual may be arrested upon a complaint, indictment, or information against a private corporation.

**"Sec. 26.220. Service of Summons**

"(a) A peace officer shall serve a summons on a private corporation by personally delivering a copy of it to the corporation's registered agent for service. If a registered agent has not been designated or cannot with reasonable diligence be found at the registered office, the peace officer shall serve the summons by personally delivering a copy of it to the president or a vice-president of the corporation.

"(b) If the peace officer certifies on the return that he diligently but unsuccessfully attempted to effect service under Subsection (a) of this section or if the corporation is a foreign corporation that has no certificate of authority, he shall serve the summons on the Secretary of State by personally delivering a copy of it to him or to the assistant secretary of state or to any clerk in charge of the corporation department of his office. On receipt of the summons copy, the Secretary of State shall immediately forward it by certified or registered mail, return receipt requested, addressed to the defendant corporation at its registered office or, if it is a foreign corporation, at its principal office in the state or country under whose law it was incorporated.

"(c) The Secretary of State shall keep a permanent record of the date and time of receipt and his disposition of each summons served under Subsection (b) of this section together with the return receipt.

**"Sec. 26.221. Arraignment and Pleadings**

"In all criminal actions instituted against a private corporation under the provisions of this subchapter:

"(1) appearance is for the purpose of arraignment; and

“(2) the corporation has 10 full days after the day the arraignment takes place and before the day the trial begins to file written pleadings.

**“Sec. 26.222. Appearance**

“(a) A defendant private corporation appears through counsel or its representative.

“(b) If a private corporation does not appear in response to summons or appears but fails or refuses to plead, it is considered to be present in person for all purposes, and the court shall enter a plea of not guilty in its behalf and may proceed with trial, judgment, and sentencing.

“(c) After appearing and entering a plea in response to summons, if a private corporation is absent without good cause at any time during later proceedings, it is considered to be present in person for all purposes, and the court may proceed with trial, judgment, or sentencing.

**“Sec. 26.223. Fine Treated as Judgment in Civil Action**

“If a private corporation is found guilty of a violation of this subchapter and a fine imposed, the fine shall be entered and docketed by the clerk of the court as a judgment against the corporation, and the fine shall be of the same force and effect and be enforced against the corporation in the same manner as if the judgment were recovered in a civil action.

**“Sec. 26.224. Cumulative Provisions**

“Nothing in this subchapter repeals or amends any of the provisions of Subchapters A through E of this chapter, Chapter 27 of this code, or Article 6029a, Revised Civil Statutes, 1925, as added, but this subchapter is cumulative of those acts and they remain in full force and effect.

**“Sec. 26.225. Effect on Certain Other Laws**

“To the extent that any general or special law makes an act or omission a criminal offense and which act or omission also constitutes a criminal offense under this subchapter, the other general or special law is repealed, but only to that extent.

“[Sections 26.226–26.260 reserved for expansion]

**“SUBCHAPTER G. COASTAL OIL AND HAZARDOUS SPILL  
PREVENTION AND CONTROL**

**“Sec. 26.261. Short Title**

“This subchapter may be cited as the Texas Oil and Hazardous Substances Spill Prevention and Control Act.

**“Sec. 26.262. Policy**

“It is the policy of this state to prevent the spill or discharge of oil and other hazardous substances into the coastal waters of the state and to cause the removal of such discharges without undue delay.

**“Sec. 26.263. Definitions**

“As used in this subchapter:

“(1) ‘Coastal land or water’ means any land or water in the coastal area as defined in this section.

“(2) ‘Coastal area’ refers to the geographic area comprising all counties of Texas having any tidewater shoreline, including that portion of the bed and waters of the Gulf of Mexico within the jurisdiction of the State of Texas.

“(3) ‘Discharge or spill’ means an act or omission by which oil or hazardous substances in harmful quantities are spilled, leaked, pumped, poured, emitted, entered, or dumped onto or into coastal

waters of this state or by which those substances are deposited where, unless controlled or removed, they may drain, seep, run, or otherwise enter coastal water in this state. The term 'discharge' or 'spill' shall not include any discharge which is authorized by a permit issued pursuant to federal law or any other law of this state.

"(4) 'Fund' means the Texas Coastal Protection Fund.

"(5) 'Harmful quantity' means that quantity of oil or hazardous substance the discharge or spill of which is determined to be harmful to the public health or welfare by the administrator of the Environmental Protection Agency pursuant to the Federal Water Pollution Control Act and by the board.

"(6) 'Hazardous substance' means any substance designated as such by the administrator of the Environmental Protection Agency pursuant to the Federal Water Pollution Control Act and by the board.

"(7) 'Oil' means oil of any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged soil.

**"Sec. 26.264. Administrative Provisions**

"(a) The department shall administer this subchapter. The department shall cooperate with other agencies, departments, and subdivisions of this state and of the United States in implementing this subchapter.

"(b) The board may issue rules necessary and convenient to carry out the purposes of this subchapter.

"(c) The executive director shall enforce the provisions of this subchapter and any rules given effect pursuant to Subsection (b) of this section.

"(d) The executive director with the approval of the board may contract with any public agency or private persons or other entity for the purpose of implementing this subchapter.

"(e) The executive director shall solicit the assistance of and cooperate with local governments, the federal government, other agencies and departments of this state, and private persons and other entities to develop regional contingency plans for prevention and control of oil and hazardous substance spills and discharges.

"(f) The department and the State Department of Highways and Public Transportation, in cooperation with the governor and the United States Coast Guard, shall develop a contractual agreement whereby personnel, equipment, and materials in possession or under control of the State Department of Highways and Public Transportation may be diverted and utilized for spill and discharge cleanup as provided for in this subchapter. Under the agreement, the following conditions shall be met:

"(1) the department and the State Department of Highways and Public Transportation shall develop and maintain written agreements and contracts on how such utilization will be effected, and designating agents for this purpose;

"(2) personnel, equipment, and materials may be diverted only with the approval of the department and the State Department of Highways and Public Transportation, acting through their designated agents, or by action of the governor;

"(3) all expenses and costs of acquisition of such equipment and materials or resulting from such cleanup activities shall be paid from the fund, subject to reimbursement as provided in this subchapter; and

"(4) subsequent to such activities, a full report of all expenditures and significant actions shall be prepared and submitted to the governor, the Legislative Budget Board, and the state auditor, and shall be reviewed by the board.

"(g) The executive director shall develop and revise from time to time written action and contractual plans with the designated on-scene coordinator provided for by federal law.

"(h)(1) In developing rules and plans under this subchapter and in engaging in cleanup activities, the board shall recognize the authority of the predesignated United States Coast Guard on-scene coordinator to oversee, coordinate, and direct all private and public activities related to cleanup of discharges and spills. The executive director shall place the resources of the state at the disposal of the on-scene coordinator, if he is present, or shall engage in cleanup activities when directed to do so by the on-scene coordinator.

"(2) Nothing in this subchapter shall prevent the executive director from acting independently if no on-scene coordinator is present and no action is being taken by an agency of the federal government.

"(3) The department shall seek reimbursement from the designated agencies of the federal government for the reasonable costs incurred in cleanup operations, including but not limited to costs of personnel, equipment, the use of equipment, and supplies.

"(i) The executive director shall after appropriate investigation prepare a report on the discharge or spill, and this report shall provide the following information:

"(1) a description of the incident, including location, amount, and characteristics of the material discharged or spilled and the prevailing weather conditions;

"(2) the time and duration of discharge or spill and the time and method by which the discharge or spill was reported;

"(3) the action taken, and by whom, to contain and clean up the discharge or spill;

"(4) an assessment of both the short-term and long-term environmental impact of the accidental discharge or spill;

"(5) the estimated cost of cleanup operations and the source of payment of these costs;

"(6) an evaluation of the principal causes of the discharge or spill and an assessment of how similar incidents might be prevented in the future; and

"(7) a description of any legal action being taken to levy penalties or collect damages.

"(j) This subchapter is cumulative of all other powers of the department.

"(k) In the event that a discharge or spill presents or threatens to present an occurrence of disaster proportions, the governor shall utilize the authority granted him under the Texas Disaster Act of 1975 (Article 6889—7, Vernon's Texas Civil Statutes) to make available and bring to bear all resources of the state to prevent or lessen the impact of such a disaster.

**"Sec. 26.265. Texas Coastal Protection Fund**

"(a) There is hereby created the Texas Coastal Protection Fund. This fund shall not exceed \$5 million, exclusive of fines and penalties received under this subchapter.

"(b) The fund shall consist of money appropriated to it by the legislature and any fines or other reimbursement to the fund provided for un-

der this subchapter. It is the intent of the legislature that the state attempt to recover money spent from the fund according to the following priority:

“(1) direct reimbursement from the federal government as provided by federal law for costs incurred in cleanup operations;

“(2) in the event that federal reimbursement is not available, the state shall seek to recover cleanup costs from the responsible party. If the responsible party refuses to pay, the state shall initiate legal action to collect the actual costs, provided, however, that such recovery may not exceed \$5 million; and

“(3) if federal reimbursement occurs but is insufficient to repay the fund, the state shall take action to collect the remainder from the responsible party as provided in Subdivision (2) of this subsection.

“(c) Money in the fund may be expended only for the purpose of obtaining personnel, equipment, and supplies required in the cleanup of discharges and spills, including restoration of beaches and marine resources.

**“Sec. 26.266. Removal of Accidental Discharge**

“(a) Any person discharging or spilling oil or hazardous substances into coastal waters shall immediately undertake all feasible actions to abate and remove the discharge or spill subject to applicable federal and state requirements.

“(b) In the event that the responsible party is unwilling or in the opinion of the executive director is unable to remove the discharge or spill, or the removal operation of such party is inadequate, the department may undertake the removal of the discharge or spill and may retain agents for these purposes who shall operate under the direction of the executive director.

“(c) Any discharge or spill of oil or hazardous substance, the source of which is unknown, occurring in coastal waters or in waters beyond the jurisdiction of this state and which may reasonably be expected to enter coastal water may be removed by or under the direction of the executive director. Any expense involved in the removal of an unexplained discharge pursuant to this subsection shall be paid, on the board's approval, from the fund, subject to the authority of the board to seek reimbursement from an agency of the federal government, and from the responsible party if the identity of that party is discovered.

“(d) In any activity undertaken pursuant to this section, the department shall act in accordance with the national contingency plan authorized by the Federal Water Pollution Control Act, as amended, and with Section 26.264(h) of this code.

**“Sec. 26.267. Exemptions**

“(a) No person shall be held liable under this subchapter for any accident resulting from an act of God, act of war, third party negligence, or an act of government.

“(b) Nothing in this subchapter shall in any way affect or limit the liability of any person to any other person or to the United States, or to this state except as specifically provided in Section 26.265(b)(2) of this code.

**“Sec. 26.268. Penalties**

“(a) This section is cumulative of all penalties and enforcement provisions provided elsewhere to the department.



"(b) Any person who violates any provision of this subchapter or of a department rule or order issued pursuant to this subchapter is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation.

"(c) Any person operating, in charge of, or responsible for a facility or vessel which causes a discharge or spill as defined in this subchapter and fails to report said spill or discharge upon discovery thereof shall be guilty of a Class A misdemeanor.

"(d) Any person who knowingly falsifies records or reports concerning the prevention or cleanup of a discharge or spill of oil or hazardous substance as provided for in this subchapter is guilty of a felony of the third degree.

"(e) The penalties authorized by this subchapter for discharges and spills shall not apply to any discharge or spill promptly reported and removed by the responsible party in accordance with the rules and orders of the department.

## **"CHAPTER 27. DISPOSAL WELLS**

### **"SUBCHAPTER A. GENERAL PROVISIONS**

#### **"Section 27.001. Short Title**

"This chapter may be cited as the Disposal Well Act.

#### **"Sec. 27.002. Definitions**

"In this chapter:

"(1) 'Commission' means the Texas Water Commission.

"(2) 'Board' means the Texas Water Development Board.

"(3) 'Executive director' means the executive director of the Texas Department of Water Resources.

"(4) 'Department' means the Texas Department of Water Resources.

"(5) 'Railroad commission' means the Railroad Commission of Texas.

"(6) 'Pollution' means the alteration of the physical, chemical, or biological quality of, or the contamination of, water that makes it harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

"(7) 'Industrial and municipal waste' means any liquid, gaseous, solid, or other waste substance, or combination of these substances, which may cause or might reasonably be expected to cause pollution of fresh water and which result from

"(A) processes of industry, manufacturing, trade, or business;

"(B) development or recovery of natural resources other than oil or gas; or

"(C) disposal of sewage or other wastes of cities, towns, villages, communities, water districts, and other municipal corporations.

"(8) 'Oil and gas waste' means waste arising out of or incidental to drilling for or producing of oil or gas which includes but is not limited to salt water, brine, sludge, drilling mud, and other liquid or semi-liquid waste material.

"(9) 'Fresh water' means water having bacteriological, physical, and chemical properties which make it suitable and feasible for beneficial use for any lawful purpose.

"(10) 'Casing' means material lining used to seal off strata at and below the earth's surface.

"(11) 'Disposal well' means an artificial excavation or opening in the ground made by digging, boring, drilling, jetting, driving, or some other method, and used to inject, transmit, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; or a well initially drilled to produce oil and gas which is used to transmit, inject, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; but the term does not include any surface pit, surface excavation, or natural depression used to dispose of industrial and municipal waste or oil and gas waste.

"[Sections 27.003–27.010 reserved for expansion]

#### "SUBCHAPTER B. INDUSTRIAL AND MUNICIPAL WASTE

##### "Sec. 27.011. Permit From Commission

"No person may begin drilling a disposal well or converting an existing well into a disposal well to dispose of industrial and municipal waste without first obtaining a permit from the commission.

##### "Sec. 27.012. Application for Permit

"The department shall prescribe forms for application for a permit and shall make the forms available on request without charge.

##### "Sec. 27.013. Information Required of Applicant

"The commission shall require an applicant to furnish any information the commission considers necessary to discharge its duties under this chapter.

##### "Sec. 27.014. Application Fee

"With each application, the department shall collect a fee of \$25 for the benefit of the state.

##### "Sec. 27.015. Letter From Railroad Commission

"A person making application to the department for a permit under this chapter shall submit with the application a letter from the railroad commission stating that drilling the disposal well and injecting industrial and municipal waste into the subsurface stratum will not endanger or injure any oil or gas formation.

##### "Sec. 27.016. Inspection of Well Location

"On receiving an application for a permit, the executive director shall have an inspection made of the location of the proposed disposal well to determine the local conditions and the probable effect of the well and shall determine the requirements for the setting of casing, as provided in Sections 27.051, 27.055, and 27.056 of this code.

##### "Sec. 27.017. Recommendations From Other Agencies

"The executive director shall submit to the Texas Department of Health Resources, the Water Well Drillers Board, and to other persons which the board may designate, copies of every application received in proper form. These agencies, persons, and divisions may make recommendations to the commission concerning any aspect of the application and shall have reasonable time to do so as the board may prescribe.

##### "Sec. 27.018. Hearing on Permit Application

"If it is considered necessary and in the public interest, the commission may hold a public hearing on the application.

**"Sec. 27.019. Rules, Etc.**

"(a) The commission shall adopt procedures reasonably required for the performance of its powers, duties, and functions under this chapter, including rules for notice and procedure of public hearings.

"(b) Copies of any rules under this chapter proposed by the board shall before their adoption be sent to the railroad commission, the executive director, the Texas Department of Health Resources, the Water Well Drillers Board, and any other persons the board may designate. Any agency or person to whom the copies of proposed rules are sent may submit comments and recommendations to the board and shall have reasonable time to do so as the board may prescribe.

"[Sections 27.020–27.030 reserved for expansion]

**"SUBCHAPTER C. OIL AND GAS WASTE****"Sec. 27.031. Permit From Railroad Commission**

"No person may begin drilling a disposal well or converting an existing well into a disposal well to dispose of oil and gas waste without first obtaining a permit from the railroad commission.

**"Sec. 27.032. Information Required of Applicant**

"The railroad commission shall require an applicant to furnish any information the railroad commission considers necessary to discharge its duties under this chapter.

**"Sec. 27.033. Letter From Executive Director**

"A person making application to the railroad commission for a permit under this chapter shall submit with the application a letter from the executive director stating that drilling the disposal well and injecting oil and gas waste into the subsurface stratum will not endanger the freshwater strata in that area and that the formation or stratum to be used for the disposal is not freshwater sand.

**"Sec. 27.034. Railroad Commission Rules, Etc.**

"(a) The railroad commission shall adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under this chapter, including rules for notice and procedure of public hearings.

"(b) Copies of any rules under this chapter proposed by the railroad commission shall, before their adoption, be sent to the department, the Texas Department of Health Resources, the Water Well Drillers Board, and any other persons the railroad commission may designate. Any agency or person to whom the copies of proposed rules and regulations are sent may submit comments and recommendations to the railroad commission and shall have reasonable time to do so as the railroad commission may prescribe.

"[Sections 27.035–27.050 reserved for expansion]

**"SUBCHAPTER D. ISSUANCE OF PERMITS:  
TERMS AND CONDITIONS****"Sec. 27.051. Issuance of Permit**

"(a) The commission or railroad commission may grant an application in whole or part and may issue the permit if it finds:

"(1) that the installation of the disposal well is in the public interest;

"(2) that no existing rights will be impaired; and

"(3) that, with proper safeguards, both ground and surface fresh water can be adequately protected from pollution.

“(b) In the permit the commission or railroad commission shall impose terms and conditions reasonably necessary to protect fresh water from pollution, including the necessary casing.

**“Sec. 27.052. Copies of Permit; Filing Requirements**

“(a) The department shall furnish the railroad commission, the Texas Department of Health Resources, and the Water Well Drillers Board with a copy of each permit the commission issues. The railroad commission shall furnish the department with a copy of each permit the railroad commission issues and the executive director shall in turn forward copies to the Texas Department of Health Resources and the Water Well Drillers Board.

“(b) Before beginning injection operations, a person receiving a permit to inject industrial and municipal waste shall file a copy of the permit with the health authorities of the county, city, and town where the well is located.

**“Sec. 27.053. Record of Strata**

“The commission or railroad commission may require a person receiving a permit under this chapter to keep and furnish a complete and accurate record of the depth, thickness, and character of the different strata penetrated in drilling the disposal well.

**“Sec. 27.054. Electric or Drilling Log**

“If an existing well is to be converted to a disposal well, the commission or railroad commission may require the applicant to furnish an electric log or a drilling log of the existing well.

**“Sec. 27.055. Casing Requirements**

“The casing shall be set at the depth, with the materials, and in the manner required by the commission or railroad commission.

**“Sec. 27.056. Factors in Setting Casing Depth**

“Before setting the depth to which casing shall be installed, the commission or railroad commission shall consider:

- “(1) known geological and hydrological conditions and relationships;
- “(2) foreseeable future economic development in the area; and
- “(3) foreseeable future demand for the use of fresh water in the locality.

“[Sections 27.057–27.100 reserved for expansion]

**“SUBCHAPTER E. CIVIL AND CRIMINAL REMEDIES**

**“Sec. 27.101. Civil Penalty**

“(a) A person who violates any provision of this chapter, any rule of the board or the railroad commission made under this chapter, or any term, condition, or provision of a permit issued under this chapter shall be subject to a civil penalty in any sum not exceeding \$5,000 for each day of noncompliance and for each act of noncompliance.

“(b) The action may be brought by the executive director or the railroad commission in any court of competent jurisdiction in the county where the offending activity is occurring or where the defendant resides.

**“Sec. 27.102. Injunction, Etc.**

“The executive director or the railroad commission may enforce any valid rule made under this chapter or any term or condition of a permit issued by the commission or railroad commission under this chapter by injunction or other appropriate remedy. The suit shall be brought in a court of competent jurisdiction in the county where the offending activity is occurring.

**"Sec. 27.103. Procedure**

"(a) At the request of the executive director or the railroad commission, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both the injunctive relief and civil penalty, authorized in Sections 27.101 and 27.102 of this chapter.

"(b) Any party to a suit may appeal from a final judgment as in other civil cases.

**"Sec. 27.104. Effect of Permit on Civil Liability**

"The fact that a person has a permit issued under this chapter does not relieve him from any civil liability.

**"CHAPTER 28. WATER WELLS****"Section 28.001. Definitions**

"In this chapter:

"(1) 'Department' means the Texas Department of Water Resources.

"(2) 'Commission' means the Texas Water Commission.

**"Sec. 28.002. Underground Water: Regulations**

"The department shall make and enforce rules and regulations for conserving, protecting, preserving, and distributing underground, subterranean, and percolating water located in this state and shall do all other things necessary for these purposes.

**"Sec. 28.003. Certain Wells to be Plugged or Cased**

"The owner of a water well which encounters salt water water containing mineral or other substances injurious to vegetation or agriculture shall securely plug or case the well in a manner that will effectively prevent the water from escaping from the stratum in which it is found into another water-bearing stratum or onto the surface of the ground.

**"Sec. 28.004. Penalty**

"If the owner of a well that is required to be cased or plugged by this chapter fails or refuses to case or plug the well within the 30-day period following the date of the commission's order to do so or if a person fails to comply with any other order issued by the commission under this chapter within the 30-day period following the date of the order, he is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$500. He commits a separate offense each day the failure or refusal continues after the 30-day period.

**"CHAPTER 29. SALT WATER HAULERS****"SUBCHAPTER A. GENERAL PROVISIONS****"Section 29.001. Short Title**

"This chapter may be cited as the Salt Water Haulers Act.

**"Sec. 29.002. Definitions**

"In this chapter:

"(1) 'Person' means an individual, association of individuals, partnership, corporation, receiver, trustee, guardian, executor, or a fiduciary or representative of any kind.

"(2) 'Railroad commission' means the Railroad Commission of Texas.

"(3) 'Salt water' means water containing salt or other mineralized substances produced by drilling an oil or gas well or produced in connection with the operation of an oil or gas well.

“(4) ‘Hauler’ means a person who transports salt water for hire by any method other than by pipeline.

“[Sections 29.003–29.010 reserved for expansion]

#### “SUBCHAPTER B. PERMITS

##### “Sec. 29.011. Application for Permit

“Any person may apply to the railroad commission for a permit to haul and dispose of salt water.

##### “Sec. 29.012. Application Form

“The railroad commission shall prescribe a form on which an application for a permit may be made and shall provide the form to any person who wishes to submit an application.

##### “Sec. 29.013. Contents of Application

“The application for a permit shall:

“(1) state the number of vehicles the applicant plans to use for salt water hauling;

“(2) affirmatively show that the vehicles are designed so that they will not leak during transportation of salt water;

“(3) include an affidavit from a person who operates an approved system of salt water disposal stating that the applicant has permission to use the approved system;

“(4) state the applicant's name, business address, and permanent mailing address; and

“(5) include other relevant information required by railroad commission rules.

##### “Sec. 29.014. Rejecting an Application

“If an application for a permit does not comply with Section 29.013 of this code or with reasonable rules of the railroad commission, the railroad commission may reject the application.

##### “Sec. 29.015. Bond

“Before issuing a permit to a person whose application it has approved, the railroad commission shall require the person to file with it a bond in the amount of \$5,000, guaranteed by a corporate surety company and conditioned on the payment of full damages to any person who may acquire a judgment against the permittee for damages done to the person's property by the permittee's improper hauling, handling, or disposal of salt water. However, the railroad commission may dispense with the bond requirement on a proper showing of financial responsibility.

##### “Sec. 29.016. Expiration of Permit

“Permits issued under this chapter expire on August 31 of each year.

##### “Sec. 29.017. Renewal of Permit

“A permittee may apply to renew his permit by submitting an application for renewal on or before August 31 of each year.

##### “Sec. 29.018. Suspension; Refusal to Renew

“The railroad commission shall suspend or shall refuse to renew a permit for a period of six months if the permittee:

“(1) violates the provisions of this chapter;

“(2) violates reasonable rules promulgated under Section 29.031 of this code; or

“(3) does not maintain his operation at the standards that entitled him to a permit under Section 29.013 of this code.

##### “Sec. 29.019. Appeal

“Any person whose permit application is refused, whose permit is suspended, or whose application for permit renewal is refused by the rail-

road commission may file a petition in an action to set aside the railroad commission's act within the 30-day period immediately following the day he receives notice of the railroad commission's action.

**"Sec. 29.020. Suit to Compel Railroad Commission to Act**

"If the railroad commission does not act within a reasonable time after a person applies for a permit or for renewal of a permit, the applicant may notify the railroad commission of his intention to file suit. After 10 days have elapsed since the day the notice was given, the applicant may file a petition in an action to compel the railroad commission to show cause why it should not be directed by the court to take immediate action.

**"Sec. 29.021. Venue**

"The venue in actions under Sections 29.019 and 29.020 of this code is fixed exclusively in the district courts of Travis County.

"[Sections 29.022–29.030 reserved for expansion]

**"SUBCHAPTER C. RULES**

**"Sec. 29.031. Rulemaking Power**

"The railroad commission shall adopt rules to effectuate the provisions of this chapter.

**"Sec. 29.032. Copies of Rules**

"The railroad commission shall print the rules and provide copies to persons who apply for them.

**"Sec. 29.033. Effective Date of Rules**

"No rule or amendment to a rule is effective until after the 30-day period immediately following the day on which a copy of the rule is filed with the Secretary of State.

"[Sections 29.034–29.040 reserved for expansion]

**"SUBCHAPTER D. OFFENSES; PENALTIES**

**"Sec. 29.041. Hauling Without Permit**

"No hauler may haul and dispose of salt water off the lease, unit, or other oil or gas property where it is produced unless the hauler has a permit issued under this chapter.

**"Sec. 29.042. Exception**

"A person may haul salt water for use in connection with drilling or servicing an oil or gas well without obtaining a hauler's permit under this chapter.

**"Sec. 29.043. Using Haulers Without Permit**

"No person may knowingly utilize the services of a hauler to haul and dispose of salt water off the lease, unit, or other oil or gas property where it is produced if the hauler does not have a permit as required under this chapter.

**"Sec. 29.044. Disposing of Salt Water**

"(a) No hauler may dispose of salt water on public roads or on the surface of public land or private property in this state in other than a railroad commission-approved disposal pit without written authority from the railroad commission.

"(b) No hauler may dispose of salt water on property of another without the written authority of the landowner.

**"Sec. 29.045. Use of Unmarked Vehicles**

"No person who is required to have a permit under this chapter may haul salt water in a vehicle that does not bear the owner's name and the hauler's permit number. This information shall appear on both sides and the rear of the vehicle in characters not less than three inches high.

**"Sec. 29.046. Penalty**

"A person who violates any provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than 10 days or by both.

**"CHAPTER 30. REGIONAL WASTE DISPOSAL****"SUBCHAPTER A. GENERAL PROVISIONS****"Section 30.001. Short Title**

"This chapter may be cited as the Regional Waste Disposal Act.

**"Sec. 30.002. Purpose**

"The purpose of this chapter is to authorize public agencies to cooperate for the safe and economical collection, transportation, treatment, and disposal of waste in order to prevent and control pollution of water in the state.

**"Sec. 30.003. Definitions**

"In this chapter:

"(1) 'City' means any incorporated city or town, whether operating under general law or under its home-rule charter.

"(2) 'District' means any district or authority created and existing under Article XVI, Section 59 or Article III, Section 52 of the Texas Constitution, including any river authority.

"(3) 'Public agency' means any district, city, or other political subdivision or agency of the state which has the power to own and operate waste collection, transportation, treatment, or disposal facilities or systems, and any joint board created under the provisions of Section 14, Chapter 114, Acts of the 50th Legislature, Regular Session, 1947 (Article 46d—14, Vernon's Texas Civil Statutes).

"(4) 'River authority' means any district or authority created by the legislature which contains an area within its boundaries of one or more counties and which is governed by a board of directors appointed or designated in whole or in part by the governor, or by the Texas Water Commission, including without limitation the San Antonio River Authority.

"(5) 'River basins' and 'coastal basins' mean the river basins and coastal basins now defined and designated by the Texas Water Development Board as separate units for the purposes of water development and inter-watershed transfers, and as they are made certain by contour maps on file in the offices of the Texas Department of Water Resources, including but not limited to the rivers and their tributaries, streams, water, coastal water, sounds, estuaries, bays, lakes, and portions of them, as well as the lands drained by them.

"(6) 'Waste' means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, waste heat, or other waste that may cause impairment of the quality of water in the state, including storm waters.

"(7) The terms 'sewage,' 'municipal waste,' 'recreational waste,' 'agricultural waste,' 'industrial waste,' 'other waste,' 'pollution,' 'water,' or 'water in the state,' and 'local government' shall have the meanings defined in Section 26.001 of this code.

"(8) 'Sewer system' means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.



“(9) ‘Treatment facility’ means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement Chapter 26 of this code or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply, such as standby treatment units and clear well facilities; any works, including sites therefor and acquisition of the land that will be part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste or facilities to provide for the collection, control, and disposal of waste heat.

“(10) ‘Disposal system’ means any system for disposing of waste, including sewer systems and treatment facilities.

**“Sec. 30.004. Cumulative Effect of Chapter**

“(a) This chapter is cumulative of other statutes governing the Texas Department of Health Resources and the Texas Department of Water Resources relating to:

“(1) the issuance of bonds;

“(2) the collection, transportation, treatment, or disposal of waste; and

“(3) the design, construction, acquisition, or approval of facilities for these purposes.

“(b) The powers granted to districts and public agencies by this chapter are additional to and cumulative of the powers granted by other laws. This chapter is full authority for any district or public agency to enter into contracts authorized by it and for any district to authorize and issue bonds under its provisions without reference to the provisions of any other law or charter. No other law or charter provision which limits, restricts, or imposes additional requirements on matters authorized by this chapter shall apply to any action or proceeding under this chapter unless expressly provided to the contrary in this chapter.

**“Sec. 30.005. Construction of Chapter**

“The terms and provisions of this chapter shall be liberally construed to accomplish its purposes.

“[Sections 30.006–30.020 reserved for expansion]

**“SUBCHAPTER B. REGIONAL WASTE DISPOSAL  
SYSTEMS**

**“Sec. 30.021. Disposal System**

“A district may acquire, construct, improve, enlarge, extend, repair, operate, and maintain one or more disposal systems.

**“Sec. 30.022. Purchase and Sale of Facilities**

“A district may contract with any person to purchase or sell by installments over such term as considered desirable any waste collection, transportation, treatment, or disposal facilities or systems.

**“Sec. 30.023. Lease of Facilities**

“A district may lease to or from any person for such term and on such conditions as may be considered desirable any waste collection, transportation, treatment, or disposal facilities or systems.

**"Sec. 30.024. Operating Agreements**

"A district may make operating agreements with any person for such terms and on such conditions as may be considered desirable for the operation of any waste collection, transportation, treatment, or disposal facilities or systems of any person by the district.

**"Sec. 30.025. Waste Disposal Contracts by District**

"A district may make contracts with any person, including any public agency located inside or outside the boundaries of the district, under which the district will collect, transport, treat, or dispose of waste for the person.

**"Sec. 30.026. Contracts by River Authority**

"Each river authority may make contracts authorized by this chapter with any person, including any public agency situated wholly or partly inside its boundaries and any public agency situated wholly or partly inside the river basin and any public agency situated wholly or partly inside the coastal basins adjoining its boundaries, but a river authority may not make contracts to serve a public agency situated wholly inside the boundaries of another river authority or to serve facilities of a person situated wholly within the boundaries of another river authority, except with the consent of the other river authority.

**"Sec. 30.027. Contract With Public Agency**

"A public agency may make contracts with a district under which the district will make a disposal system available to the public agency and will furnish waste collection, transportation, treatment, and disposal services to the public agency, group of public agencies, or other persons through the district's disposal system.

**"Sec. 30.028. Contract Provisions**

"(a) The contract may provide for:

"(1) duration of the contract for a specified period or until issued and unissued bonds and refunding bonds of the district are paid;

"(2) assuring equitable treatment of parties who contract with the district for waste collection, transportation, treatment, and disposal services from the same disposal system;

"(3) requiring the public agency to regulate the quality and strength of waste to be handled by the disposal system;

"(4) sale or lease to or use by a district of all or part of a disposal system owned or to be acquired by the public agency;

"(5) the district operating all or part of a disposal system owned or to be acquired by the public agency; and

"(6) other terms the district or the governing body of the public agency consider appropriate or necessary.

"(b) The contract shall specify the method for determining the amounts to be paid by the public agency to the district.

"(c) A contract made by a city may provide that the district shall have the right to use the streets, alleys, and public ways and places inside the city during the term of the contract.

**"Sec. 30.029. Continued Use of District Facilities**

"After amortization of the district's investment in the disposal system, the public agency is entitled to continued performance of the service during the useful life of the disposal system, on payment of reasonable charges reduced to take into consideration the amortization.

**"Sec. 30.030. Source of Contract Payments**

"(a) A public agency may pay for the waste collection, transportation, treatment, and disposal services with income from its waterworks system, sanitary sewer system, or both systems, or its combined water and sanitary sewer system, as prescribed by the contract. In the alternative, a joint board defined as a public agency in Section 30.003, Subdivision (3), may pay for these services from any revenue or other funds within its control specified in the contract if the city councils of the cities which created the joint board approve, by ordinance, the contract between the joint board and the district. These payments constitute an operating expense of each system whose revenue is so used.

"(b) The obligation of contract payments on the income of the public agency's water system is subordinate to the obligation imposed by any bonds that are payable solely from the water system net revenue and that are outstanding at the time the contract is made, unless the ordinance or resolution authorizing the bonds expressly reserved the right to give the contract payments a priority over the bond requirements.

"(c) If a public agency having taxing power holds an election substantially according to the applicable provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended, relating to the issuance of bonds by cities and it is determined that the public agency is authorized to levy an ad valorem tax to make all or part of the payments under a contract with a district, then the contract is an obligation against the taxing power of the public agency to the extent authorized, and payments under the contract may be payable from and constitute solely an obligation against the taxing powers of the city or may be payable both from taxes and from revenue prescribed in the contract. Otherwise, neither the district nor the holders of the district's bonds are entitled to demand payment of the public agency's obligation out of any tax revenue.

**"Sec. 30.031. Rates**

"(a) When all or part of the payments under a contract are to be made from revenue of the waterworks system, sanitary sewer system, both systems, or a combination of both systems, the public agency shall establish, maintain, and periodically adjust the rates charged for services of the systems, so that the revenue, along with any taxes levied in support of the indebtedness, will be sufficient to pay:

"(1) the expenses of operating and maintaining the systems;

"(2) the obligations to the district under the contract; and

"(3) the obligations of bonds that are secured by revenue of the systems.

"(b) The contract may require the use of consulting engineers and financial experts to advise the public agency on the need for adjusting rates.

"(c) Notwithstanding any provision of this chapter or any other law to the contrary, a district may use the proceeds of bonds issued for the purpose of constructing a waste disposal system or systems, and payable wholly or in part from ad valorem taxes, for the purchase of capacity in, or a right to have the wastes of the district treated in, a waste collection, treatment, or disposal system and facilities owned or to be owned exclusively or in part by another public agency, and a district may issue bonds payable wholly or in part from ad valorem taxes specifically for such purpose if a majority of the resident electors of the district have authorized the governing body of the district to issue bonds for that purpose or

for the purpose of constructing a waste disposal system or systems. The bonds shall be issued in accordance with the provisions of, and shall be subject to the same terms and conditions of, the laws authorizing the district to issue bonds for the purpose of constructing waste collection, treatment, and disposal systems, except as otherwise provided in this subsection.

**"Sec. 30.032. Service to More Than One Public Agency**

"A contract or group of contracts may provide for the district to render services concurrently to more than one person through constructing and operating a disposal system and may provide that the cost of these services be allocated among the persons as provided in the contract or group of contracts.

**"Sec. 30.033. Property Acquired by Condemnation or Otherwise**

"(a) To accomplish the purposes of this chapter, a district may acquire by purchase, lease, gift, or in any other manner all or any interest in property inside or outside the boundaries of the district and may own, maintain, use, and operate it.

"(b) To accomplish the purposes of the chapter, a district may exercise the power of eminent domain to acquire all or any interest in property inside or outside the boundaries of the district. The power shall be exercised according to the laws applicable or available to the district.

**"Sec. 30.034. Cost of Relocating, Altering, Etc.**

"If a district makes necessary the relocating, raising, rerouting, changing the grade of, or altering the construction of any highway, railroad, electric transmission line, pipeline, or telephone or telegraph properties or facilities in the exercise of powers granted under this chapter, the district shall pay all of the actual cost of the relocating, raising, rerouting, changing in grade, or altering of construction and shall pay all of the actual cost of providing comparable replacement of facilities without enhancement, less the net salvage value of the facilities.

**"Sec. 30.035. Elections**

"No election is required for the exercise of any power under this chapter except for the tax levy as provided by Section 30.030(c) of this code.

"[Sections 30.036–30.050 reserved for expansion]

**"SUBCHAPTER C. DISTRICT REVENUE BONDS**

**"Sec. 30.051. Issuance of Bonds**

"In order to acquire, construct, improve, enlarge, extend, or repair disposal systems, the district may issue bonds secured by a pledge of all or part of the revenue from any contract entered into under this chapter and other income of the district.

**"Sec. 30.052. Form, Denomination, Interest Rate**

"The governing body of the district shall prescribe the form, denomination, and rate of interest for the bonds.

**"Sec. 30.053. Refunding Bonds**

"A district may refund any bonds issued under this chapter on the terms and conditions and at the rate of interest the governing body prescribes.

**"Sec. 30.054. Sale or Exchange of Bonds**

"A district may sell bonds issued under this chapter at public or private sale at the price or prices and on the terms determined by the governing body, or it may exchange the bonds for property or any interest in

property of any kind considered necessary or convenient to the purposes authorized in this chapter.

**"Sec. 30.055. Interim Bonds**

"Pending the issuance of definitive bonds, a district may issue negotiable interim bonds or obligations eligible for exchange or substitution by use of definitive bonds.

**"Sec. 30.056. Attorney General's Examination**

"(a) After issuance of the bonds is authorized, the bonds and the record relating to their issuance may be submitted to the attorney general for examination.

"(b) When the bonds recite that they are secured by a pledge of the proceeds from a contract between the district and a public agency, a copy of the contract and the proceedings of the public agency authorizing the contract may also be submitted to the attorney general.

"(c) If the attorney general finds that the bonds are authorized and that the contract is made in accordance with the constitution and laws of this state, he shall approve the bonds and the contract.

**"Sec. 30.057. Registration by Comptroller**

"After the bonds have been approved by the attorney general, they shall be registered by the state comptroller.

**"Sec. 30.058. Validation Suit**

"(a) Instead of or in addition to obtaining the approval of the attorney general, the district may have the bonds validated by suit in the district court as provided in Chapter 316, Acts of the 56th Legislature, Regular Session, 1959 (Article 717m, Vernon's Texas Civil Statutes).

"(b) The governing body of the district may wait until after termination of the validation suit to fix the interest rate and sale price of the bonds.

"(c) If the proposed bonds recite that they are secured by the proceeds of a contract between the district and a public agency, the petition shall so allege, and the notice of the suit shall mention this allegation and shall specify the public agency's funds or revenues from which the contract payments are to be made.

**"Sec. 30.059. Bonds Incontestable**

"After the bonds are approved by the attorney general and registered with the comptroller, the bonds and the contract are incontestable.

**"Sec. 30.060. Negotiable Instruments**

"Bonds issued under this subchapter are negotiable instruments.

**"Sec. 30.061. Investment Securities Under Uniform Commercial Code**

"Bonds issued under this subchapter are investment securities governed by Chapter 8, Uniform Commercial Code.

**"Sec. 30.062. Bonds as Authorized Investments**

"Bonds issued under this chapter are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees, and for the sinking funds of cities, towns, villages, school districts, and other political corporations or subdivisions of the state.

**"Sec. 30.063. Security for Deposits**

"The bonds are eligible to secure deposits of any public funds of the state or any political subdivision of the state and are lawful and sufficient security for the deposits to the extent of their value when accompanied by unmatured coupons attached to the bonds.

**"Sec. 30.064. Funds Set Aside From Bond Proceeds**

"The district may set aside out of the proceeds from the sale of bonds:

"(1) interest to accrue on the bonds and administrative expenses to the estimated date when the disposal system will become revenue producing; and

"(2) reserve funds created by the resolution authorizing the bonds.

**"Sec. 30.065. Investment of Proceeds**

"Pending their use, proceeds from the sale of bonds may be invested in securities or time deposits as specified in the resolution authorizing the issuance of the bonds or the trust indenture securing the bonds. The earnings on these investments shall be applied as provided in the resolution or trust indenture.

**"Sec. 30.066. Rates and Charges**

"While any bonds are outstanding, the governing body of the district shall fix, maintain, and collect for services furnished or made available by the disposal system rates and charges adequate to:

"(1) pay maintenance and operating costs of and expenses allocable to the disposal system;

"(2) pay the principal of and interest on the bonds; and

"(3) provide and maintain the funds created by the resolution authorizing the bonds.

"[Sections 30.067–30.100 reserved for expansion]

**"SUBCHAPTER D. RIVER AUTHORITY PLANNING****"Sec. 30.101. Authorization of Regional Plans**

"Each river authority may prepare regional plans for water quality management, control, and abatement of pollution in any segment of its river basin and adjoining coastal basins which:

"(1) are consistent with any applicable water quality standards established under current law within the river basin;

"(2) recommend disposal systems which will provide the most effective and economical means of collection, storage, treatment, and purification of waste, and means to encourage rural, municipal, and industrial use of the works and systems; and

"(3) recommend maintenance and improvement of water quality standards within the river basin and methods of adequately financing the facilities necessary to implement the plan.

**"Sec. 30.102. Planning in Related Fields**

"River authorities may conduct planning in related or affected fields reasonably necessary to give meaning to the water quality management and pollution control planning carried out under this subchapter.

**"Sec. 30.103. Joint Planning**

"(a) River authorities may join in the performance of planning functions with any district or public agency and enter into planning agreements for the term and on the conditions considered desirable to provide coordinated planning on a basin-wide scale, including adjacent coastal basins.

"(b) River authorities may provide for river basin planning committees as entities with powers, responsibilities, functions, and duties conferred by mutual agreement.

**"Sec. 30.104. Coordination With Other Planning Agencies**

"A river authority performing planning functions under this subchapter shall coordinate its efforts and cooperate with other public planning agencies having significant planning interests in any segment of the river basin in or for which the planning is being conducted by the river authority.

**"Sec. 30.105. Financial Assistance**

"River authorities may make applications and enter into contracts for financial assistance in comprehensive planning which are appropriate under Section 3(c) of the Federal Water Pollution Control Act, as amended under 33 U.S.C. Section 1926 et seq., under 40 U.S.C. Section 461 et seq., and under any other relevant statutes.

**"Sec. 30.106. Supervision by Texas Department of Water Resources**

"The Texas Department of Water Resources is authorized to exercise continuing supervision on behalf of the state of comprehensive plans prepared under this chapter.

"[Chapters 31-40 reserved for expansion]"

Sec. 2. Sections 2, 7, 8, and 9, Solid Waste Disposal Act, as amended (Article 4477—7, Vernon's Texas Civil Statutes), are amended<sup>47</sup> to read as follows:

**Definitions**

"Sec. 2. As used in this Act, unless the context requires a different definition:

"(1) 'person' means individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity;

"(2) 'department' means the Texas Department of Health Resources;

"(3) 'department of water resources' means the Texas Department of Water Resources;

"(4) 'local government' means a county; an incorporated city or town; or a political subdivision exercising the authority granted under Section 6 of this Act;

"(5) 'solid waste' means all putrescible and nonputrescible discarded or unwanted solid materials, including municipal solid waste and industrial solid waste; as used in this Act, the term 'solid waste' does not include, and this Act does not apply to: (i) soil, dirt, rock, sand and other natural and man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or (ii) waste materials which result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Texas Railroad Commission;

"(6) 'municipal solid waste' means solid waste resulting from or incidental to municipal, community, trade, business and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste;

"(7) 'industrial solid waste' means solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations, including discarded or unwanted solid materials suspended or transported in liquids, and discarded or unwanted materials in liquid or semi-liquid form; the term 'industrial solid waste' does not in-

47. Vernon's Ann.Civ.St. art. 4477—7, §§ 2, 7 to 9.

clude waste materials, the discharge of which is subject to Chapter 26, Water Code;

"(8) 'garbage' means solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products;

"(9) 'rubbish' means nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste material; combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (1600°F to 1800°F);

"(10) 'sanitary landfill' means a controlled area of land upon which solid waste is disposed of in accordance with standards, regulations or orders established by the department or the board;

"(11) 'incineration' means the destruction of solid waste by burning in a furnace used for the volume reduction of solid waste (an incinerator);

"(12) 'composting' means the controlled biological decomposition of organic solid waste under aerobic conditions; and

"(13) 'person affected' for the purpose of Section 9 hereof means any person who is a resident of a county or any county adjacent or contiguous to the county in which a site, facility or plant is to be located including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government. Such person affected shall also demonstrate that he has suffered or will suffer actual injury or economic damage."

#### **Right of entry; inspections**

"Sec. 7. The authorized agents or employees of the department, the department of water resources, and local governments have the right to enter at all reasonable times in or upon any property, whether public or private, within the governmental entity's jurisdiction, including in the case of an incorporated city or town its extraterritorial jurisdiction, for the purpose of inspecting and investigating conditions relating to solid waste management and control. Agents and employees shall not enter private property having management in residence without notifying the management, or the person in charge at the time, of their presence and exhibiting proper credentials. The agents and employees shall observe the rules and regulations of the establishment being inspected concerning safety, internal security, and fire protection.

#### **Prohibited acts; violations; penalties; injunction**

"Sec. 8. (a) No person may cause, suffer, allow or permit the collection, storage, handling or disposal of solid waste, or the use or operation of a site for the disposal of solid waste, in violation of this Act or of the rules, regulations, permits, licenses or other orders of the department or the department of water resources, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs.

"(b) Any person who violates any provision of this Act or of any rule, regulation, permit, license, or other order of the department or the department of water resources, or a county or a political subdivision ex-



exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs, is subject to a civil penalty of not less than \$50.00 nor more than \$1,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8.

"(c) Whenever it appears that a person has violated, or is violating or threatening to violate, any provision of this Act, or of any rule, regulation, permit, or other order of the department or the department of water resources, then the department or the department of water resources may cause a civil suit to be instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50.00 nor more than \$1,000.00 for each act of violation and for each day of violation, as the court may deem proper, or for both injunctive relief and civil penalty. Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this Act or any rule, regulation, permit, or other order of the department or the department of water resources, the district court shall grant appropriate injunctive relief. At the request of the department or the executive director of the department of water resources when authorized by the Texas Water Development Board, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both injunctive relief and penalty, as authorized in this subsection.

"(d) Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, regulation, permit, license, or other order of the department, the department of water resources, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, has occurred or is occurring within the jurisdiction of that county or political subdivision, the county or political subdivision, in the same manner as the department of water resources and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (c) of this section, against the person who committed, is committing, or is threatening to commit, the violation.

"(e) Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, regulation, permit, license, or other order of the department, the department of water resources, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, has occurred or is occurring within the area of the extraterritorial jurisdiction of an incorporated city or town, or is causing or will cause injury to or an adverse effect on the health, welfare or physical property of the city or town or its inhabitants, then the city or town, in the same manner as the department of water resources and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (c) of this section, against the person who committed, is committing, or is threatening to commit, the violation.

"(f) A suit for injunctive relief or for recovery of a civil penalty, or for both injunctive relief and penalty, may be brought either in the county where the defendant resides or in the county where the violation or threat of violation occurs. In any suit brought to enjoin a violation or threat of violation of this Act or of any rule, regulation, permit, license or other order of the department of water resources, the department, a

county, or a political subdivision exercising the authority granted in Section 6 of this Act, the court may grant the governmental entity bringing the suit, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

"(g) In a suit brought by a local government under Subsection (d) or (e) of this section, the department of water resources and the department are necessary and indispensable parties.

"(h) Any party to a suit may appeal from a final judgment as in other civil cases.

"(i) All civil penalties recovered in suits instituted under this Act by the State of Texas through the department of water resources or the department shall be paid to the General Revenue Fund of the State of Texas. All civil penalties recovered in suits first instituted by a local government or governments under this Act shall be equally divided between the State of Texas on the one hand and the local government or governments on the other, with 50 per cent of the recovery to be paid to the General Revenue Fund of the State of Texas and the other 50 per cent equally to the local government or governments first instituting the suit.

#### Appeals

"Sec. 9. A person affected by any ruling, order, decision, or other act of the department or the department of water resources may appeal by filing a petition in a district court of Travis County. A person affected by any ruling, order, decision, or other act of a county, or of a political subdivision exercising the authority granted in Section 6 of this Act, may appeal by filing a petition in a district court having jurisdiction in the county or political subdivision. The petition must be filed within 30 days after the date of the action, ruling, order, or decision of the governmental entity complained of. Service of citation must be accomplished within 30 days after the date the petition is filed. The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed, unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay. In an appeal from an action by the department, the department of water resources, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the issue is whether the action is invalid, arbitrary or unreasonable."

Sec. 3. Subsections (a) and (b), Section 3, Solid Waste Disposal Act (Article 4477—7, Vernon's Texas Civil Statutes), are amended<sup>48</sup> to read as follows:

"(a) The department is hereby designated the state solid waste agency with respect to the collection, handling, storage, and disposal of municipal solid waste, and shall be the coordinating agency for all municipal solid waste activities. The department shall be guided by the Texas Board of Health Resources in its activities relating to municipal solid waste. The department shall seek the accomplishment of the purposes of this Act through the control of all aspects of municipal solid waste

<sup>48</sup>. Vernon's Ann.Civ.St. art. 4477—7, § 3, subsecs. (a), (b).

collection, handling, storage, and disposal by all practical and economically feasible methods consistent with the powers and duties given the department under this Act and other existing legislation. The department has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The department shall consult with the department of water resources with respect to the water pollution control and water quality aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the department by this Act.

“(b) The department of water resources is hereby designated the state solid waste agency with respect to the collection, handling, storage and disposal of industrial solid waste, and shall be the coordinating agency for all industrial solid waste activities. The department of water resources shall seek the accomplishment of the purposes of this Act through the control of all aspects of industrial solid waste collection, handling, storage and disposal by all practical and economically feasible methods consistent with the powers and duties given it under this Act and other existing legislation. The department of water resources has the powers and duties specifically prescribed in this Act and all other powers necessary or convenient to carry out its responsibilities. The department of water resources shall consult with the department with respect to the public health aspects, and with the Texas Air Control Board with respect to the air pollution control and ambient air quality aspects, of the matters placed under the jurisdiction of the department of water resources by this Act.”

Sec. 4. Subsections (a), (b), and (f), Section 4, Solid Waste Disposal Act (Article 4477—7, Vernon's Texas Civil Statutes), are amended <sup>49</sup> to read as follows:

“(a) As used in this section, the term ‘state agency’ refers to either the department or the department of water resources, and ‘state agencies’ means both the department and the department of water resources.

“(b) The department is authorized to develop a state municipal solid waste plan, and the department of water resources is authorized to develop a state industrial solid waste plan. The state agencies shall coordinate the solid waste plans developed. Before a state agency adopts its solid waste plan or makes any significant amendments to the plan, the Texas Air Control Board shall have the opportunity to comment and make recommendations on the proposed plan or amendments, and shall be given such reasonable time to do so as the state agency may specify.”

“(f) This subsection applies to the collection, handling, storage, and disposal of industrial solid waste which is disposed of within the property boundaries of a tract of land owned and controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and which tract of land is within 50 miles from the plant or operation which is the source of the industrial solid waste. This subsection does not apply if the waste is collected, handled, stored, or disposed of with solid waste from any other source or sources. The department of water resources may not require a permit under this Act for the disposal of any solid waste to which this subsection applies, but this does not change or limit any authority the department of water resources may

<sup>49</sup> Vernon's Ann.Civ.St. art. 4477—7, § 4, subsecs. (a), (b), (f).

have with respect to the requirement of permits, the control of water quality, or otherwise, under Chapter 26, Water Code. However, the department of water resources may adopt rules and regulations as provided under Subsection (c) of this section to govern and control the collection, handling, storage and disposal of the industrial solid waste to which this subsection applies so as to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection. The department of water resources may require a person who disposes or plans to dispose of industrial solid waste under the authority of this subsection to submit to the department of water resources such information as may be reasonably required to enable the department of water resources to determine whether in its judgment the waste disposal activity is one to which this subsection applies."

Sec. 5. Subdivision (9), Subsection (e), Section 4, Solid Waste Disposal Act (Article 4477—7, Vernon's Texas Civil Statutes), is amended <sup>50</sup> to read as follows:

"(9) Manufacturing and processing establishments, commonly known as rendering plants, which process for any purpose waste materials originating from animals, poultry, and fish (all hereinafter referred to as 'animals') and materials of vegetable origin, including without limitation animal parts and scraps, offal, paunch manure, and waste cooking grease of animal and vegetable origin are subject to regulation under the industrial solid waste provisions of this Act and may also be regulated under Chapter 26, Water Code. When a rendering establishment is owned by a person who operates the rendering establishment as an integral part of an establishment engaged in manufacturing or processing for animal or human consumption food derived wholly or in part from dead, slaughtered, or processed animals, poultry, or fish, the combined business may operate under authority of a single permit issued pursuant to Chapter 26, Water Code. The provisions of this subsection do not apply to those rendering plants in operation and production at the time of the effective date of this Act.

Sec. 6. Subsection (a), Section 5, Solid Waste Disposal Act (Article 4477—7, Vernon's Texas Civil Statutes), is amended <sup>51</sup> to read as follows:

"(a) Every county has the solid waste management powers which are enumerated in this Section 5. However, the exercise of the licensing authority and other powers granted to counties by this Act does not preclude the department or the department of water resources from exercising any of the powers vested in the department or the department of water resources under other provisions of this Act, including specifically the provisions authorizing the department and the department of water resources to issue permits for the operation and maintenance of sites for the disposal of solid waste. The powers specified in Subsections (d) and (e) of this section and Section 18 of House Bill No. 727, Acts of the 62nd Legislature, 1971, may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Subsection (f) of Section 4 of this Act applies. The department of water resources, by specific action or directive, may supersede any authority or power granted to or exercised by a county under this Act, but only with respect to those matters which are, under this Act, within the jurisdiction of the state agency acting."

50. Vernon's Ann.Civ.St. art. 4477—7, § 4, subsec. (e), subd. (9).

51. Vernon's Ann.Civ.St. art. 4477—7, § 5, subsec. (a).

Sec. 7. Subdivisions (4) and (6), Subsection (d), Section 5, Solid Waste Disposal Act (Article 4477—7, Vernon's Texas Civil Statutes), are amended<sup>52</sup> to read as follows:

"(4) No license for the use of a site for disposal of solid waste may be issued, renewed, or extended without the prior approval, as appropriate, of the department or the department of water resources. If a license is issued, renewed, or extended by a county in accordance with this Subsection (d), the owner or operator of the site does not need to obtain a permit from the department or the department of water resources for the same site."

"(6) The county has the authority, for good cause, after hearing with notice to the licensee and to the governmental entities named in Paragraph (1) of this Subsection (d), to revoke or amend any license it issues for reasons pertaining to public health, air or water pollution, land use, or violation of this Act or of any other applicable laws or regulations controlling the disposal of solid waste. For like reasons, the department and the department of water resources each may, for good cause, after hearing with notice to the licensee, the county which issued the license, and the other governmental entities named in Paragraph (1) of this Subsection (d), revoke or amend any license issued by a county, but only as to those sites which fall, under the terms of this Act, within the jurisdiction of the state agency acting."

Sec. 8.<sup>53</sup> (a) On the effective date of this Act, the governor shall appoint the initial members to the Texas Water Commission.

(b) The persons initially appointed to the commission shall be designated to serve by the governor as follows: one member of the commission to serve a two-year term, one member of the commission to serve a four-year term, and one member of the commission to serve a six-year term.

(c) The initial members of the commission shall take office on September 1, 1977.

Sec. 9.<sup>53</sup> (a) The Texas Department of Water Resources and the Texas Water Commission, as provided in Section 1 of this Act, are created effective September 1, 1977, and the existing Texas Water Rights Commission and Texas Water Quality Board are abolished on September 1, 1977.

(b) The department is the successor to the Texas Water Quality Board and Texas Water Rights Commission and incorporates the Texas Water Development Board and shall carry out their respective duties, responsibilities, and functions from the effective date of this Act as provided by law, including acts of this legislature.

(c) The abolishment of the Texas Water Rights Commission shall not affect or impair any act done or obligation, right, license, permit, or penalty accrued or existing under the authority of the prior law, and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning such obligation, right, license, permit, or penalty. No action or proceeding commenced prior to the effective date of this Act shall be affected by its enactment.

(d) The rights, powers, and duties delegated by law to the Texas Water Rights Commission which are not expressly assigned to the Texas Water Commission are expressly transferred to the Texas Department of Wa-

52. Vernon's Ann.Civ.St. art. 4477—7, § 5, 53. V.T.C.A. Water Code, prec. § 5.001 subsec. (d), subds. (4), (6). note.

ter Resources in accordance and consistent with Title 2, Subtitle A, Chapter 5, Subchapter B of this code.

(e) The abolishment of the Texas Water Quality Board shall not affect or impair any act done or obligation, right, license, permit, water quality criteria, standard or requirement, or penalty accrued or existing under the authority of the prior law, and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning such obligation, right, license, permit, water quality criteria, standard or requirement, or penalty. No action or proceeding commenced prior to the effective date of this Act shall be affected by its enactment.

(f) The rights, powers, and duties delegated by law to the Texas Water Quality Board are expressly transferred to the Texas Department of Water Resources as is provided herein or in accordance and consistent with Title 2, Subtitle A, Chapter 5, Subchapter B of this code.

Sec. 10.<sup>53</sup> The members of the Texas Water Development Board serving as members of the board on the effective date of this Act shall continue in office until the expiration of their respective terms.

Sec. 11.<sup>53</sup> On September 1, 1977, all personnel, equipment, data, documents, facilities, and other items of the Texas Water Rights Commission, the Texas Water Development Board, and the Texas Water Quality Board shall be transferred to the Texas Department of Water Resources.

Sec. 12.<sup>53</sup> The officers and employees of the existing Texas Water Rights Commission, the Texas Water Development Board, and the Texas Water Quality Board shall cooperate fully with the reorganization.

Sec. 13. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the senate on April 28, 1977: Yeas 17, Nays 12; May 17, 1977, senate concurred in house amendments by a viva-voce vote; passed the house, with amendments, on May 13, 1977, by a non-record vote.

Approved June 16, 1977.

Effective Sept. 1, 1977.

53. V.T.C.A. Water Code, prec. § 5.001 note.